

## Unofficial Comparison Version

**DISCLAIMER:** This document is an unofficial comparison version of revisions proposed by the Office of Management and Budget (OMB) in October 2023 to guidance in parts 1, 25, 175, 180, 182, 183, 184, and 200 of title 2 of the Code of Federal Regulations (CFR). While we have taken steps to ensure the accuracy of this comparison version, it is not the official version for purposes of proposal and comment. There may be minor differences between the proposed revisions shown below and the proposed revisions in the official version published in the *Federal Register (FR)*. Please refer to the official version, which also includes a preamble summarizing OMB’s proposal and request for comments. The official version also appears on Regulations.gov (<https://www.regulations.gov/>) and may be found by searching for the following docket: “OMB-2023-0017.”

**NOTE:** With the exception of Appendix I to Part 200 (Full Text of Notice of Funding Opportunity), this unofficial comparison version does not show OMB’s proposed revisions to other appendices in 2 CFR part 200, which are set forth in the official version in the *FR*.

### Title 2—~~Grants and Agreements~~ Federal Financial Assistance

#### Subtitle A—Office of Management and Budget Guidance for ~~Grants and~~

#### ~~Agreements~~ Federal Financial Assistance

### PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND

#### SUBTITLE A

#### Subpart A—Introduction to Title 2 of the CFR

#### § 1.100 Content of this title.

This title contains—:

(a) Office of Management and Budget (OMB) guidance to Federal agencies on ~~government wide~~ governmentwide policies ~~and procedures~~ for the award and administration of ~~grants and agreements~~ Federal financial assistance; and

(b) Federal agency regulations implementing that OMB guidance.

#### § 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

## Unofficial Comparison Version

(b) The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance ~~and~~, not regulation.

(c) Each Federal agency that ~~publishes regulations implementing the OMB guidance~~ ~~awards Federal financial assistance~~ has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory ~~(~~. Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the OMB guidance ~~)~~. *See also § 1.220.*

### **§ 1.110 Issuing authorities.**

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

### **Subpart B—Introduction to Subtitle A**

#### **§ 1.200 Purpose of chapters I and II.**

~~(a)~~ Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform ~~government-wide~~ ~~governmentwide~~ policies and procedures for the management of the agencies' ~~grants and agreements~~. ~~Federal financial assistance.~~

~~(b) There are two chapters for publication of the guidance because portions of it may be revised as a result of ongoing efforts to streamline and simplify requirements for the award and administration of grants and other financial assistance (and thereby implement the Federal Financial Assistance Management Improvement Act of 1999, Pub. L. 106–107).~~

## Unofficial Comparison Version

~~(e) The OMB guidance in its initial form—before completion of revisions described in paragraph (b) of this section—is published in chapter II of this subtitle. When revisions to a part of the guidance are finalized, that part is published in chapter I and removed from chapter II.~~

### **§ 1.205 Applicability to ~~grants and other funding instruments~~ Federal financial assistance.**

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another ~~(note that each part identifies the types of instruments to which it applies).~~. All portions of the guidance apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance ~~or nonprocurement instruments, and some portions also apply to procurement contracts.~~ For example, the:

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

(b) Cost principles in ~~parts 220, 225 and 230~~ subpart E of part 200 of this subtitle apply to procurement contracts issued under a Federal award, as well as to Federal financial assistance, ~~although those.~~ Cost principles are implemented for Federal agencies' direct procurement contracts through the Federal Acquisition Regulation in title 48 of the CFR, rather than through Federal agency regulations on ~~grants and agreements~~ Federal financial assistance in this title.

### **§ 1.210 Applicability to Federal agencies and others.**

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect ~~others~~ other entities through each Federal agency's implementation of the guidance, portions of which may apply to—:

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

Unofficial Comparison Version

(2) ~~Non-Federal entities~~ Recipients and subrecipients that receive or apply for the agency's grants or agreements agency's Federal financial assistance or receive subawards under ~~those~~ grants or cooperative agreements; or

(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

**§ 1.215 Relationship to previous issuances.**

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. ~~Specifically:~~

<del>Guidance</del> <del>in ***</del>	<del>On</del> <del>***</del>	<del>Previously</del> <del>was in ***</del>
(a) Chapter I, part 180	Nonprocurement debarment and suspension	<del>OMB guidance that conforms with the government wide common rule (see 60 FR 33036, June 26, 1995). OMB guidance (54 FR 4946, January 31, 1989) and a government wide common rule (as amended at 68 FR 66534, November 26, 2003).</del>
(b) Chapter I, part 182	Drug free workplace requirements	<del>OMB Circulars A-21, "Cost Principles for Educational Institutions" (Chapter II, part 225); A-87, "Cost Principles for State, Local and Indian Tribal Governments" (Chapter II, part 225); A-89, "Federal Domestic Assistance Program Information"; A-102</del>
(c) Chapter II, part 200	Uniform administrative requirements, cost principles, and audit requirements for federal awards	<del>OMB Circulars A-21, "Cost Principles for Educational Institutions" (Chapter II, part 225); A-87, "Cost Principles for State, Local and Indian Tribal Governments" (Chapter II, part 225); A-89, "Federal Domestic Assistance Program Information"; A-102</del>

Unofficial Comparison Version

Guidance in ***	On ***	Previously was in ***
--------------------	-----------	--------------------------

~~and a government-wide common rule (53 FR 8034, March 11, 1988); A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (Chapter II, part 215); A-122, “Cost Principles for Non-Profit Organizations” (Chapter II, part 230); and A-133 “Audits of States, Local Governments and Non-Profit Organizations”.~~

**§ 1.220 Federal agency implementation of this subtitle.**

A Federal agency that awards ~~grants and agreements~~ Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and ~~or~~ in guidance documents, policy documents, and procedural issuances, such as internal instructions to the ~~agency's~~ agency’s awarding and administering officials. An applicant ~~or~~, recipient, or subrecipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

**§ 1.230 Maintenance of this subtitle.**

## Unofficial Comparison Version

OMB issues guidance in this subtitle after publication in the Federal Register. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

### **§ 1.231 Severability.**

The provisions of this subtitle are separate and severable from one another. If any provision of this subtitle is held invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

### **Subpart C—Responsibilities of OMB and Federal Agencies**

#### **§ 1.300 OMB responsibilities.**

OMB is responsible for:

- (a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230-;
- (b) Interpreting the policy requirements in this subtitle-;
- (c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866-;
- (d) Conducting broad oversight of ~~government-wide~~governmentwide compliance with the guidance in this subtitle-; and
- (e) Performing other OMB functions specified in this subtitle.

#### **§ 1.305 Federal agency responsibilities.**

## Unofficial Comparison Version

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

- (a) Implementing the guidance in this subtitle;
- (b) Ensuring that the ~~agency's components and subcomponents comply~~ Federal agency complies with ~~the agency's~~ their implementation of the guidance;
- (c) Coordinating with the Council on Federal Financial Assistance, the Grants Quality Service Management Office, and other governance committees as appropriate; and
- (d) Performing other functions specified in this subtitle.

### **PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT**

#### **Subpart A—General**

##### **§ 25.100 ~~Purposes~~Purpose of this part.**

This part provides guidance to Federal ~~awarding~~ agencies ~~to establish that:~~

- (a) The unique entity identifier ~~as a~~(UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients, and;
- (b) The System for Award Management (SAM) ~~as.gov~~ is the repository for standard information about applicants and recipients.

##### **§ 25.105 ~~Types of awards to which this part applies~~Applicability.**

- (a) This part applies to a Federal ~~awarding agency's grants, cooperative agreements, loans, and other types of agency's~~ Federal financial assistance as defined in § 25.406.

##### ~~§ 25.110 Exceptions to this part.~~

## Unofficial Comparison Version

~~(a) General. Through a Federal awarding agency's implementation of the guidance in this part, this~~400. This part applies to all applicants for and recipients of Federal awards, other than those financial assistance unless exempted by Federal statute or exempted in paragraphs (b) and (c) of this section that apply for or receive agency awards. §25.110.

~~(b) Exceptions for individuals. None of the requirements in this part~~(b) Subrecipients are required to obtain a UEI in accordance with subpart C. This part does not apply to subrecipients of subrecipients (second-tier subrecipients) or contractors under Federal awards.

~~(c) This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (i.e., unrelated to any business or nonprofit organization hean individual owns or she may own or operate in his or her name).~~ operates).

~~(d) Because this part applies to loan guarantees and other guaranteed programs, recipients of the guarantee from the Federal agency (for example, lenders of guaranteed loans) are required to complete entity validations and acquire a UEI. Additionally, at the Federal agency's discretion, non-individual beneficiary borrowers (for example, small businesses or corporations) may be required by the Federal agency to obtain a UEI or register in SAM.gov.~~

### § 25.110 Exceptions to this part.

~~(e) Other~~(a) *General exceptions.*

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



Unofficial Comparison Version

(i) ~~In that case, the~~If a Federal ~~awarding~~ agency grants an exception under paragraph (a)(2) of this section, it must use a generic ~~unique~~ entity identifier in the data it reports to *USA Spending.gov* if reporting for a prime award of Federal financial assistance to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109—282, as amended, hereafter cited as “Transparency Act”). Granting an exception under paragraph (a)(2) of this section does not impact a Federal agency’s responsibility for reporting under the Transparency Act, except that it may use a generic entity identifier in the circumstances described.

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

(2) ~~The conditions under which a~~ Federal ~~awarding~~ agency may exempt either an applicant or recipient ~~are—when~~:

(i) ~~For any applicant or recipient, if the~~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 ~~applicant or recipient's~~ entity’s staff ~~or clients~~, partners, beneficiaries, and participants;

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

(1) the entity is a foreign organization or foreign public entity ~~applying for or receiving a~~

;

## Unofficial Comparison Version

(2) the Federal award or subaward ~~for a project or program will be~~ performed outside the United States ~~valued at~~;

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

and, ~~if~~

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

(B) The Federal agency must determine 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~~; or

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

~~(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.~~

~~(d)(b) Class exceptions.~~ OMB may ~~allow~~ approve additional exceptions for classes of Federal awards, applicants, ~~and~~ recipients subject to the requirements of this part when exceptions are not prohibited by statute.

**Subpart B—Policy**

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

(a) ~~Each~~A Federal ~~awarding~~ agency that ~~awards the types of issues~~ Federal financial assistance ~~defined in~~(see § 25.406400) must include the requirements ~~described in~~of paragraph (b) ~~of this section~~ in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after ~~August 13, 2020~~ the effective date of this guidance. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or any other term.

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

- (1) Be registered in ~~the SAM~~ ~~prior to~~ .gov before submitting an application ~~or plan~~;
- (2) Maintain ~~an~~ a current and active ~~SAM~~ registration ~~with current~~ in SAM.gov at all times during which it has an active Federal award or an application under consideration by a Federal agency. The applicant must review and update its ~~information, including information on a recipient's~~ information in SAM.gov annually from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the applicant’s immediate and highest-level owner and subsidiaries, as well as ~~providing information~~ on all predecessors that have ~~been awarded~~ received a Federal award or contract ~~or grant~~ within the last

## Unofficial Comparison Version

three years, ~~if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and~~; and

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

(c) For ~~the~~ purposes of this policy:

(1) The applicant meets the Federal ~~awarding agency's~~ 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~~**UEI**. If a consortium is eligible to receive funding under a Federal ~~awarding~~ agency program, but the ~~agency's~~ agency's policy is to make the Federal award to a lead entity for the consortium, the ~~unique entity identifier~~**UEI** of the lead applicant ~~will~~**must** 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 its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete.~~

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

## Unofficial Comparison Version

~~(a) A~~(a) Unless an entity is exempt under § 25.110, a Federal ~~awarding~~ agency may not ~~make issue~~ a Federal award or ~~financial modification to amend~~ an existing Federal award ~~to an applicant or recipient until~~ if the entity ~~has complied~~ is not in compliance 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)~~ of this part. This does not apply to amendments to terminate or close out a Federal award.

(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~~ the requirements to ~~provide~~ obtain a ~~unique entity identifier or UEI~~ and maintain an active ~~SAM~~ registration in SAM.gov 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~~ agency may make a Federal award to another applicant.

### § 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal ~~awarding~~ agency may add a ~~unique entity identifier~~ UEI field to information collections previously approved by OMB, ~~without having to obtain~~ with no further approval ~~to add the field~~ required.

### § 25.215 Requirements for agency information systems.

Each Federal ~~awarding~~ agency that awards Federal financial assistance (~~as defined in~~ see § 25.406400) must ensure that ~~systems processing~~ its information ~~related to the Federal awards,~~ and ~~other systems as appropriate,~~ systems are able to both accept and ~~use~~ transmit the ~~unique~~

## Unofficial Comparison Version

~~entity identifier~~UEI as the universal identifier for Federal financial assistance applicants and recipients.

### § 25.220 Use of award term.

(a) ~~To accomplish the purposes described in § 25.100, a~~ Federal ~~awarding~~ agency must include ~~in each Federal award (as defined in § 25.405)~~ the award term in ~~appendix A~~ Appendix A in all Federal financial assistance agreements (see § 25.400) to ~~this part~~ accomplish the purpose of § 25.100.

(b) A Federal ~~awarding~~ agency may use different letters and numbers than those in ~~appendix~~ 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.~~

### Subpart ~~C~~—Recipient Requirements of Subrecipients

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

(a) A recipient may not make a subaward to a subrecipient ~~unless that~~ ~~subrecipient~~ has not obtained a UEI and provided it to the recipient ~~a unique entity identifier.~~. Subrecipients are not required to complete full ~~SAM~~ registration in SAM.gov to obtain a ~~unique entity identifier~~UEI.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient ~~has obtained a unique entity identifier as described in paragraph (a) of this section~~ obtains and provides a UEI to the recipient.

### Subpart ~~D~~—Definitions

#### § 25.400 ~~Applicant~~Definitions.

Unofficial Comparison Version

~~*Applicant*, for the purposes of Terms not defined in this part, shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:~~

~~*Applicant* means any entity that applies for a non-Federal entity or award directly to a Federal agency that applies for Federal awards.~~

~~§ 25.401~~ *Entity* includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (b); and

(ix) Any State or locality;

(2) Does not include:

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

(ii) A Federal ~~Awarding Agency~~ employee.

~~*Federal Awarding Agency* has the meaning given in 2 CFR 200.1.~~

~~§ 25.405~~ *Federal Award*.

## Unofficial Comparison Version

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

### ~~§ 25.406 Federal financial assistance.~~

~~(a) Federal financial assistance, for the purposes of this part, means:~~

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

~~(1i) Grant;~~

~~(2ii) Cooperative agreements~~agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a~~))~~);

~~(3) Loans;~~

~~(4iii) Loan guarantees;~~

~~(5) Subsidies;~~

~~(6iv) Loan guarantee;~~

(v) Subsidy;

(vi) Insurance;

~~(7vii) Food commodities~~commodity;

~~(8viii) Direct appropriations~~appropriation;

~~(9ix) Assessed or voluntary contributions~~contribution; or

~~(10x) Any other financial assistance transaction that authorizes the non-Federal entity's~~entity's expenditure of Federal funds.



Unofficial Comparison Version

~~(b) Federal financial assistance, for~~(2) For the purposes of this part, the term “Federal financial assistance” does not include:

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

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

~~§ 25.407 Recipient.~~

~~Recipient, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award. This term also includes a non-Federal entity who an entity that receives or administers a Federal financial assistance awards on behalf of~~Award directly from a Federal agency.

~~§ 25.410 System for Award Management (SAM).~~

~~System for Award Management (SAM) has the meaning given in paragraph C.1 of.gov)~~ means the Federal repository into which an entity must provide the award term in appendix A to this part information required for the conduct of business as a recipient.

~~§ 25.415 Unique entity identifier.~~

~~Unique entity means the universal identifier has the meaning given in paragraph C.2 of the award term in appendix A to this part.~~

~~§ 25.425 For-profit organization.~~

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

~~(a) An “S corporation” incorporated under Subchapter S of the Internal Revenue Code;~~

~~(b) A corporation incorporated under another authority;~~

~~(c) A partnership;~~

~~(d) A limited liability corporation or partnership; and~~

~~(e) A sole proprietorship.~~

~~§ 25.430 Foreign organization.~~

~~Foreign organization has the meaning given in 2 CFR 200.1.~~

~~§ 25.431 Foreign public entity.~~

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

~~§ 25.432 Highest level owner.~~

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

~~§ 25.433 Indian Tribe (or “federally recognized Indian Tribe”).~~

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

~~§ 25.440 Local government.~~

~~Local government has the meaning given in 2 CFR 200.1.~~

~~§ 25.443 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.~~

~~§ 25.445 Nonprofit organization.~~

~~Non-Federal organization, has the meaning given in 2 CFR 200.1.~~

~~§ 25.447 Predecessor.~~

~~Predecessor means a non-Federal entity that is replaced assigned by a successor and includes any predecessors of the predecessor. SAM.gov to uniquely identify an entity.~~

~~§ 25.450 State.~~

~~State has the meaning given in 2 CFR 200.1.~~

~~§ 25.455 Subaward.~~

~~Subaward has the meaning given in 2 CFR 200.1.~~

~~§ 25.460 Subrecipient.~~

~~Subrecipient has the meaning given in 2 CR 200.1.~~

~~§ 25.462 Subsidiary.~~

~~Subsidiary has the meaning given in 2 CFR 200.1.~~

~~§ 25.465 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.~~

**Appendix A to Part –25—Award Term**

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

~~A.(a) Requirement for System for Award Management.~~

(1) Unless ~~you are exempted~~ exempt from this requirement under 2 CFR 25.110, you ~~as the recipient~~ must maintain a 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 Federal financial assistance within the last three years, if applicable, until you submit the final financial report~~ and active registration in SAM.gov. Your registration must always be current and active until you submit all final reports required under

## Unofficial Comparison Version

this Federal award or receive the final payment, whichever is later. ~~This requires that you~~ You must review and update ~~the~~ your information in SAM.gov at least annually ~~after~~ from the date of your initial registration; or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying your immediate and highest-level owner and subsidiaries and ~~more frequently if required by changes in your providing~~ information ~~or another~~ about your predecessors that have received a Federal award ~~term~~ or contract within the last three years.

### ~~B~~(b) Requirement for Unique Entity Identifier (UEI).

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

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

~~2~~(ii) May not make a subaward to an entity unless the entity has provided its ~~Unique Entity Identifier~~ UEI to you. Subrecipients are not required to ~~complete full registration in SAM.gov to obtain an active SAM registration, but must obtain a Unique Entity Identifier a~~ UEI.

### ~~C~~(c) Definitions.

For the purposes of this award term:

~~1~~. System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide ~~the~~ information required for the conduct of business as a recipient.

Additional information about registration procedures may be found ~~at the in SAM internet site.gov~~ (currently at <https://www.sam.gov>).

## Unofficial Comparison Version

~~2. Unique Entity Identifier~~ *entity identifier* means the universal identifier assigned by SAM.gov to uniquely identify ~~business entities~~ an entity.

~~3. Entity includes non-Federal entities as is~~ defined at 25 CFR 200.1400 and also includes all of the following, ~~for purposes of this part~~ types as defined in 2 CFR 200.1:

~~a. A foreign~~(1) Non-Federal entity;

(2) Foreign organization;

~~b. A foreign~~(3) Foreign public entity;

~~c. A domestic~~(4) Domestic for-profit organization; and

~~d. A~~(5) Federal agency.

~~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

### Subpart A—General

#### § 170.100 ~~Purposes~~Purpose of this part.

This part provides guidance to Federal ~~awarding~~ agencies on ~~reporting Federal awards to establish~~establishing requirements for ~~recipients' reporting~~recipients of Federal awards to report information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (~~Pub. L. Public Law~~ 109–282), as amended by ~~section 6202~~the Digital Accountability and Transparency Act of 2014 (Public Law ~~110–252, 113–101~~), hereafter referred to as “the “Transparency Act”.”

#### § 170.105 ~~Types of awards to which this part applies~~Applicability.

Unofficial Comparison Version

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

~~§ 170.110 Exceptions to which this~~ 300. This part applies:

~~(a) General. Through a Federal awarding agency's implementation of the guidance in this part, this part applies to~~ all recipients, ~~other than those exempted by law or excepted in accordance with paragraphs (b) and (c)~~ subrecipients of this section, that—

~~(1) Apply for or receive Federal awards; or~~

~~(2) Receive subawards under Federal awards.~~

~~(b) Exceptions.~~

~~(1) None of~~ who meet the reporting requirements ~~in this~~ of paragraph (c), unless exempt under Federal statute or by paragraph (d).

(b) This part does not apply to an individual who applies for or receives a Federal award financial assistance as a natural person (i.e., that is, unrelated to any business or nonprofit organization ~~he or she may own or operate in his or her name~~), an individual owns or operates).

~~(2) None of the requirements regarding reporting~~ (c) Reporting Requirements.

(1) The names and total compensation of a non-Federal entity's an entity's five most highly compensated executives ~~apply unless in the non-Federal entity's~~ must be reported if:

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

(iA) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards (and subawards) subject to the Transparency Act, as defined at § 170.320 ~~(and subawards);~~ 300; and

## Unofficial Comparison Version

~~(#B)~~ \$25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal ~~financial assistance~~-awards (and subawards) subject to the Transparency Act, as defined at § 170.~~320~~300; and

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

~~(e) Exceptions~~-d) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards or recipients. ~~OMB may allow exceptions for classes of Federal awards or recipients subject to the requirements of this part~~ when ~~exceptions are~~ not prohibited by Federal statute.

### Subpart B—Policy

#### § 170.200 Federal ~~awarding~~ agency reporting requirements.

(a) Federal ~~awarding~~ agencies ~~are required to~~ must publicly report Federal awards that equal or exceed the micro-purchase threshold ~~and~~(see 2 CFR 200.1). Federal agencies must publish the required ~~Federal award~~ information on ~~a public-facing, OMB-designated, governmentwide website and follow OMB-USAspending.gov~~ in accordance with the guidance ~~to support Transparency~~ provided by OMB and the U.S. Department of the Treasury's DATA Act ~~implementation~~-Information Model Schema (DAIMS).

(b) Federal ~~awarding agencies that obtain post-award data on subaward obligations outside of this policy~~ agencies should ~~take the necessary steps to~~ ensure that their recipients are ~~not required, due to the combination of agency-specific and Transparency Act reporting~~

## Unofficial Comparison Version

requirements, ~~do not require recipients to submit data that is the same as or similar to data multiple times required by the Transparency Act during a given reporting period.~~

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

(a) ~~Each~~A Federal ~~awarding~~ agency that makes ~~awards of~~ Federal ~~financial assistance awards~~ subject to the Transparency Act must include the requirements ~~described in~~of paragraph (b) ~~of this section~~ in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements, ~~and is issued on or after the effective date of this part.~~ . A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each ~~non-Federal entity that~~applicant, to which this part applies ~~for Federal financial assistance and that does not have an exception under § 170.110(b),~~ to have the necessary processes and systems in place to comply with ~~the reporting requirements should~~this part if they receive a Federal ~~funding~~award.

### **§ 170.220 Award Use of award term.**

~~(a) To accomplish the purposes described in § 170.100,~~(a) A Federal ~~awarding~~ agency must include the award term in ~~appendix~~Appendix A to this part in each Federal award to a



Unofficial Comparison Version

recipient under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.

(b) ~~A Federal awarding agency, consistent~~Consistent with paragraph (a) ~~of this section,~~, a Federal agency is not required to include the award term in ~~appendix A to this part if it determines that there is no possibility that~~Appendix A if the total amount of Federal funding under the Federal award will ~~not~~ 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~~increases to the Federal funding ~~under~~result in the award ~~is anticipated to equal~~equaling or ~~exceed~~exceeding \$30,000 ~~during the period of performance.~~

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

**Subpart C— - Definitions**

**§ 170.300 ~~Federal agency.~~Definitions**

~~Federal agency means a Federal agency as~~Terms not defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

**§ 170.301 ~~Federal awarding agency.~~**

~~Federal awarding agency~~has in this part shall have the same meaning ~~given~~as provided in 2 CFR part 200.4-, subpart A. As used in this part:

~~§ 170.305~~*Applicant* means any entity that applies for a Federal award,

directly from a Federal ~~award,~~agency.

*Entity* includes:

(1) Whether for ~~the purposes~~profit or nonprofit:

## Unofficial Comparison Version

- (i) A corporation;
  - (ii) An association;
  - (iii) A partnership;
  - (iv) A limited liability company;
  - (v) A limited liability partnership;
  - (vi) A sole proprietorship;
  - (vii) Any other legal business entity;
  - (viii) Another grantee or contractor that is not excluded by subparagraph (2) or (3); and
  - (ix) Any State or locality;
- (2) Does not include:
- (i) An individual recipient of ~~this part~~ Federal financial assistance; or
  - (ii) A Federal employee.

*Federal Award* means an award of Federal financial assistance that ~~a recipient~~ an entity receives ~~directly~~ from a Federal ~~awarding~~ agency.

### ~~§ 170.307 Foreign organization.~~

~~*Foreign organization* has the meaning given in 2 CFR 200.1.~~

### ~~§ 170.308 Foreign public entity.~~

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

### ~~§ 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 the purposes of this part:~~

- ~~(a) A foreign organization;~~

Unofficial Comparison Version

~~(b) A foreign public entity; and~~

~~(c) A domestic or foreign for-profit organization.~~

~~§ 170.315 Executive.~~

~~Executive means officersan officer, managing partnerspartner, or any other employees inemployee holding a management positionsposition.~~

~~§ 170.320 Federal financial assistance subject to the Transparency Act.~~

~~Federal financial assistance subject to the Transparency Act means:~~

~~(1) Means assistance that non Federal entities described in § 170.105 receive or administer in the form of— a:~~

~~(a) Grants; i) Grant;~~

~~(bii) Cooperative agreementsagreement (which does not include a cooperative research and development agreementsagreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));~~

~~(e) Loans;~~

~~(diii) Loan-guarantees;~~

~~(e) Subsidies;~~

~~(f(iv) Loan guarantee;~~

~~(v) Subsidy;~~

~~(vi) Insurance;~~

~~(gvii) Food commoditiescommodity;~~

~~(hviii) Direct appropriationsappropriation;~~

~~(ix) Assessed andor voluntary contributions; andcontribution; or~~

## Unofficial Comparison Version

~~(j) Other(x)~~ Any other financial assistance ~~transaction~~transaction that ~~authorize~~authorizes the ~~non-Federal entities'~~entity's expenditure of Federal funds.

~~(k)(2)~~ For the purposes of this part, the term "Federal financial assistance ~~subject to the Transparency Act,~~" does not include—:

~~(1i)~~ Technical assistance, ~~which~~ that provides services in lieu of money;

~~(2ii)~~ A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

~~(3iii)~~ Any classified ~~Federal~~ award; or

~~(4iv)~~ 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.~~Public Law 111--5).

### ~~§ 170.322 Recipient.~~

~~Recipient, for the purposes of this part,~~ means ~~a non-Federal-an~~ entity ~~or Federal-agency~~ that ~~received~~receives or administers a Federal Award directly from a Federal ~~award-agency~~.

### ~~§ 170.325 Subaward.~~

~~Subaward has the meaning given in 2 CFR 200.1.~~

### ~~§ 170.330 Total compensation.~~

~~Total Compensation has the meaning given in paragraph e.5 of the award term in Appendix A to this part.~~

~~Total Compensation~~ means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 29.402(c)(2).

## Appendix A to Part 170—Award Term

## Unofficial Comparison Version

### I. Reporting Subawards and Executive Compensation

#### ~~(a-) Reporting of first-tier subawards.~~

~~(1) Applicability.~~ Unless you are exempt as provided in paragraph ~~(d-)~~ of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to ~~a non-Federal~~an entity or Federal agency ~~(see definitions. You must subsequently report an action if increases to the Federal funding results in paragraph e. of this award term).~~the subaward equaling or exceeding \$30,000.

#### ~~2. Where and when to report.~~

#### ~~(2) Reporting Requirements.~~

~~(i-)~~ The ~~non-Federal~~ entity or Federal agency must report each ~~obligating actions~~subaward described in paragraph ~~(a-)~~(1-) of this award term to ~~the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at~~ <http://www.fsr.gov>.

~~(ii-)~~ For subaward information, report no later than the end of the month following the month in which the ~~obligations~~subaward was made. (For example, if the ~~obligations~~subaward was made on November 7, ~~2010~~2025, the ~~obligations~~subaward must be reported by no later than December 31, ~~2010~~2025).

~~3. What to report.~~ You must report the information about each obligating action that the ~~submission instructions posted at~~ <http://www.fsr.gov> specify.

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

~~(1-) Applicability and what to report.~~ You must report ~~the~~ total compensation for each of your five most highly compensated executives for the preceding completed fiscal year; if—:

## Unofficial Comparison Version

(i-) The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 ~~as defined in 2 CFR 170.320~~;

(ii-) in the preceding fiscal year, you received—:

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal ~~financial assistance awards (and subawards)~~ subject to the Transparency Act, ~~as defined at 2 CFR 170.320 (and subawards)~~; and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal ~~financial assistance awards (and subawards)~~ subject to the Transparency Act, ~~as defined at 2 CFR 170.320 (and subawards)~~; and,

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

*(2) Reporting Requirements.* You must report executive total compensation described in paragraph (b)(1) of this award term:

(i) As part of your registration profile at <https://www.sam.gov>.

(ii) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

*(c) Reporting of total compensation of subrecipient executives.*

## Unofficial Comparison Version

(1) *Applicability.* Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this award term, you must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

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

(ii) in the subrecipient's preceding fiscal year, the subrecipient received:

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; and

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

~~(2. Where and when to report. You.)~~ *Reporting Requirements.* Subrecipients must report to you, the recipient, their executive total compensation described in paragraph ~~b-(c)(1-)~~ of this award term:

~~i. As part of your registration profile at <https://www.sam.gov>.~~

## Unofficial Comparison Version

~~ii. By.~~ You are required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <http://www.fsrs.gov> no later than the end of the month following the month in which ~~this award is made, and annually thereafter.~~

### ~~e. Reporting of Total Compensation of Subrecipient Executives.~~

~~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—~~

~~i. in the subrecipient's preceding fiscal year, the subrecipient received—~~

~~(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,~~

~~(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and~~

~~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/execomp.htm>.)~~

~~2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:~~



Unofficial Comparison Version

~~i. To the recipient.~~

~~ii. By the end of the month following the month during which you make the subaward-~~  
was made. (For example, if ~~at~~ the subaward ~~is obligated~~ was made on any date during the month of  
October of a given year (i.e., between October 1 and 31), you must report any required  
compensation information of the subrecipient by ~~November 30 of that year.~~ 7, 2025, the  
subaward must be reported by no later than December 31, 2025).

~~(d.) Exemptions.~~

~~(1) If, in the previous tax year, you had gross income, from all sources, under \$300,000,~~  
you are exempt from the requirements to report:

~~(i.) Subawards, and~~

~~(ii.) The total compensation of the five most highly compensated executives of any~~  
subrecipient.

~~(e.) Definitions.~~

For purposes of this award term:

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

~~2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:~~

~~i. A Governmental organization, which is a State, local government, or Indian tribe;~~

~~ii. A foreign public entity;~~

~~iii. A domestic or foreign Entity includes:~~

~~(1) Whether for profit or nonprofit organization; and,:~~

~~iv. (i) A domestic corporation;~~

## Unofficial Comparison Version

- (ii) An association;
  - (iii) A partnership;
  - (iv) A limited liability company;
  - (v) A limited liability partnership;
  - (vi) A sole proprietorship;
  - (vii) Any other legal business entity;
  - (viii) Another grantee or ~~foreign for-profit organization~~-contractor that is not excluded by subparagraph (2); and
  - ~~3-~~(ix) Any State or locality;
- (2) Does not include:
- (i) An individual recipient of Federal financial assistance; or
  - (ii) A Federal employee.

*Executive* means ~~officers~~an officer, managing ~~partners~~partner, or any other ~~employees in~~ employee holding a management ~~positions~~-position.

### ~~4-~~Subaward:

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

~~ii-~~The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see meaning given in 2 CFR 200.331).1.

~~iii-~~A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

## Unofficial Comparison Version

~~5. Subrecipient means a non-Federal entity or Federal agency that has the meaning given in 2 CFR 200.1.~~

- ~~i. Receives a subaward from you (the recipient) under this award; and~~
- ~~ii. Is accountable to you for the use of the Federal funds provided by the subaward.~~

~~6. Total compensation Compensation means the cash and noncash dollar value earned by the executive earns during the recipient's or subrecipient's an entity's preceding fiscal year and. This includes the following (for more information see all items of compensation as prescribed in 17 CFR 229.402(c)(2)).~~

### **PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS**

#### **Subpart A—General**

##### **§ 175.5100 Purpose of this part.**

This part establishes a ~~Governmentwide-Federal~~ award term for grants and cooperative agreements to implement the ~~requirement~~requirements in ~~paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).~~22 U.S.C. 7104(g).

##### **§ 175.40105 Statutory requirement.**

~~In (a) Federal agencies are required to include in each agency award (i.e., Federal grant or cooperative agreement) under which funding is provided to a private entity, section 106(g) of the TVPA, as amended, requires the agency to include~~ a condition that authorizes the Federal agency to terminate the award, without penalty, if ~~the~~a private entity receiving funds under the award as a recipient or a subrecipient— engages in:

## Unofficial Comparison Version

~~(a) Engages in severe~~(1) Severe forms of trafficking in persons ~~during the period of time that the award is in effect;~~

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

~~(c) Uses~~(3) The use of forced labor in the performance of the ~~award or subawards under the award~~ grant or cooperative agreement; or

(4) Acts that directly support or advance trafficking in persons, including the following acts:

(i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(A) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(B) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(iv) Charging recruited employees a placement or recruitment fee; or

## Unofficial Comparison Version

(v) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(b) Compliance plan and certification requirement.

(1) *Certification.* Prior to receiving a grant or cooperative agreement, if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds \$500,000, a recipient must certify that:

(i) The recipient has implemented a plan to prevent the activities described in paragraph (a) of this section, and is in compliance with this plan;

(ii) The recipient has implemented procedures to prevent any activities described in paragraph (a) of this section and to monitor, detect, and terminate any subcontractor, subgrantee, or employee of the recipient engaging in any activities described in paragraph (a); and

(iii) To the best of the recipient's knowledge, neither the recipient, nor any subcontractor or subgrantee of the recipient or any agent of the recipient or of such a subcontractor or subgrantee, is engaged in any of the activities described in paragraph (a).

(2) *Annual certification.* If the recipient receives the award, it must submit an annual certification consistent with paragraph (1) for each year the award is in effect.

(3) *Compliance plan.* Any plan or procedures implemented pursuant to paragraph (b) must be appropriate to the size and complexity of the grant or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

## Unofficial Comparison Version

(4) *Copies of the compliance plan.* The recipient must provide a copy of the plan to the grant officer upon request, and as appropriate, must post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(5) *Minimum requirements of the compliance plan.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraph (a), the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the recipient, subrecipient, contractor, or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents, subrecipients, contractors, or subcontractors at any tier and at any dollar value from engaging in trafficking in persons, including activities in paragraph

## Unofficial Comparison Version

(a), and to monitor, detect, and terminate any agents, subgrants, or subrecipient, contractor, or subcontractor employees that have engaged in such activities.

(c) Notification to Inspectors General and cooperation with government. The head of a Federal agency making or awarding a grant or cooperative agreement must require that the recipient of the grant or cooperative agreement:

(1) Immediately inform the Inspector General of the Federal agency of any information it receives from any source that alleges credible information that the recipient, any subcontractor or subgrantee of the recipient, or any agent of the recipient or of such a subcontractor or subgrantee, has engaged in conduct described in paragraph (a); and

(2) Fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.

### Subpart B—Guidance

#### § 175.15 ~~Award-200~~ Use of award term.

(a) To implement the ~~trafficking in persons requirement in section 106~~ requirements of 22 U.S.C. 7104(g) ~~of the TVPA, as amended,~~ a Federal ~~awarding~~ agency must include the award term in ~~paragraph (b)~~ Appendix A of this ~~section in—~~ part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.25~~(d)~~;300; and

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

## Unofficial Comparison Version

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

### § 175.205 Referral.

A Federal agency official should inform the agency's suspension and debarment official if an award is terminated based on a violation of a prohibition in the award term under Appendix A.

### Subpart C—Definitions

#### § 175.300 Definitions.

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

*Abuse or threatened abuse of law or legal process* means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause ~~that an~~ ~~agency must~~ a person to take some action or refrain from taking some action.

*Coercion* means:

- (1) threats of serious harm to or physical restraint against any person;
- (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) the abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.



## Unofficial Comparison Version

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Involuntary servitude* includes a condition of servitude induced by means of:

(1) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) the abuse or threatened abuse of the legal process.

*Private Entity* means any entity, including for-profit organizations, nonprofit organizations, institutes of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

*Recruitment Fee* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for:

- (i) Advertising;
- (ii) Obtaining permanent or temporary labor certification, including any associated fees;
- (iii) Processing applications and petitions;
- (iv) Acquiring visas, including any associated fees;

## Unofficial Comparison Version

(v) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vi) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(vii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(viii) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(ix) Government-mandated fees, such as border crossing fees, levies, or worker welfare fund;

(x) Transportation and subsistence costs:

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xi) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in ~~paragraph (a) of this section, is:~~ the introductory text of this definition, is a recruitment fee, regardless of whether the payment is:

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

## Unofficial Comparison Version

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including,

but not limited to:

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

*Severe forms of trafficking in persons* means:

(1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

### **Appendix A to Part 175—Award Term**

I. Trafficking in persons.

(a-) *Provisions applicable to a recipient that is a private entity.*

Unofficial Comparison Version

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

~~(i. Engage in severe)~~ Severe forms of trafficking in persons ~~during the period of time that the award is in effect;~~;

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

~~(iii. Use)~~ The use of forced labor in the performance of ~~the award or subawards under the~~this award— or any subaward; or

~~2.~~(iv) Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(1) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(2) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

Unofficial Comparison Version

(D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) We as the ~~Federal~~-awarding ~~Federal~~ agency may unilaterally terminate this award, without penalty, if ~~you or a subrecipient that is a~~ private entity —under this award:

(i-) Is determined to have violated a prohibition in paragraph (a-)(1) of this award term; or

(ii-) Has an employee ~~who~~that is determined ~~by the agency official authorized to terminate the award~~to have violated a prohibition in paragraph (a-)(1) of this award term through conduct that is either—:

(A-) Associated with ~~the~~ performance under this award; or

(B-) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on ~~Governmentwide~~Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at [*agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., for example, “2 CFR part XX”)*].

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

(1) We as the ~~Federal~~-awarding ~~Federal~~ agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity— under this award:

~~1-~~(i) Is determined to have violated ~~an applicable~~ prohibition in paragraph (a-)(1) of this award term; or

## Unofficial Comparison Version

~~2-(ii)~~ Has an employee ~~whothat~~ is determined ~~by the agency official authorized to terminate the award~~ to have violated ~~an applicable~~ prohibition in paragraph ~~(a-)~~(1) of this award term through conduct that is either—:

~~i-(A)~~ Associated with ~~the~~ performance under this award; or

~~ii-(B)~~ Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on ~~Governmentwide~~Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at [*agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., for example, “2 CFR part XX”*)].

~~(c-)~~ *Provisions applicable to any recipient.*

~~(1-)~~ You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph ~~(a-)~~(1) of this award term.

~~(2-)~~ Our right to ~~terminate~~ unilaterally ~~that is terminate this award as~~ described in ~~paragraph~~ paragraphs ~~(a-)~~(2) or ~~(b)~~(1) of this section:

~~(i-)~~ Implements ~~section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (the requirements of 22 U.S.C. 7104(g)), 78, and~~

~~(ii-)~~ Is in addition to all other remedies for noncompliance that are available to us under this award.

~~(3-)~~ You must include the requirements of paragraph ~~(a-)~~(1) of this award term in any subaward you make to a private entity.

~~(d-)~~ *Definitions.*

## Unofficial Comparison Version

For purposes of this award term:

~~1. “Employee”~~ means either:

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

~~ii.(2)~~ Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing ~~or matching~~ requirements.

~~2. “Forced labor” Private Entity~~ means ~~labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.~~

~~3. “Private entity”:~~

~~i. Means any entity other than a State, local government, Indian tribe, or, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entity, entities, Indian Tribes, local governments, or states as those terms are defined in 2 CFR 175.25-200.1.~~

~~ii. Includes:~~

~~A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).~~

~~B. A for-profit organization.~~

## Unofficial Comparison Version

~~4. “Severe~~The terms “severe forms of trafficking in persons,” “commercial sex act,” ~~and~~ “~~coercion~~“sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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

### ~~§ 175.20 Referral.~~

~~An agency official should inform the agency's suspending or debarring official if he or she terminates an award based on a violation of a prohibition contained in the award term under § 175.15.~~

### ~~§ 175.25 Definitions.~~

~~Terms used in this part are defined as follows:~~

~~(a) 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; and~~

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



## Unofficial Comparison Version

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

~~(c) Local government means 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 instrumentality of a local government.~~

~~(d) Private entity.~~

## Unofficial Comparison Version

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

~~(2) This term includes:~~

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

~~(ii) A for-profit organization.~~

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

~~(1) Any State of the United States;~~

~~(2) The District of Columbia;~~

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

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

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

### **PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE**

#### **DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

##### **§ 180.5 What does this part do?**

This part provides ~~Office of Management and Budget (OMB)~~ guidance for Federal agencies on how to implement the ~~governmentwide~~government-wide debarment and suspension system for nonprocurement programs and activities.

**§ 180.10 How is this part organized?**

This part is organized ~~in~~into two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I ~~of this part~~.

(b) Subparts A through I ~~of this part~~ contain uniform ~~governmentwide~~government-wide standards that Federal agencies are to use to specify—:

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the ~~governmentwide~~government-wide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

**§ 180.15 To whom does the guidance apply?**

~~The~~This part provides guidance ~~provides OMB guidance only~~ to Federal agencies. Publication of ~~the~~this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of ~~the~~this guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

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

## Unofficial Comparison Version

As ~~required by~~ Section 3 of ~~E.O.~~ Executive Order 12549 ~~requires~~, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

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

Each Federal ~~agency~~ agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities ~~that are~~ consistent with ~~the~~ this guidance.

When adopted by a Federal agency, the provisions of the guidance have a regulatory effect ~~for~~ on that Federal agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must—:

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the Federal agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) ~~ana~~ Federal agency official may use; when entering into a covered transaction with a primary tier participant; to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award; an assurance of compliance obtained at the time of application; or a certification.

## Unofficial Comparison Version

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower-tier participants, as described in § 180.330(a). If there is a specified method, the regulation ~~needs to~~ must require Federal agency officials ~~to communicate that requirement~~ when entering into covered transactions with primary tier participants ~~to communicate that requirement~~.

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

(1) Identify any specific types of transactions ~~that~~ the Federal agency includes as “nonprocurement transactions” in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

(3) Identify specific examples of types of individuals who would be “principals” under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described ~~at~~in § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

(7) Include any provisions authorized by OMB.

**§ 180.30 Where does a Federal agency implement these guidelines?**

## Unofficial Comparison Version

Each Federal agency that participates in the ~~governmentwide~~government-wide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title of the Code of Federal Regulations.

### ~~§ 180.35 By when must a Federal agency implement these guidelines?~~

~~Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.~~

### § 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension, established by section 4 of ~~E.O.~~Executive Order 12549, recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the Federal Register for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

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

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I ~~of this part~~:

(a) Address disqualified persons only to—:

(1) Provide for their inclusion in ~~the~~ System for Award Management (SAM.gov)

Exclusions; and

(2) State ~~the~~ responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the—:

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes, and may include special procedures.

**Subpart A—General**

**§ 180.100 How are subparts A through I organized?**

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I <del>of this part.</del>
B	the types of transactions that are covered by the <del>Governmentwide</del> government-wide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into SAM.gov Exclusions
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.

Unofficial Comparison Version

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See Subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) <del>an</del> Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community ~~to use~~. The section headings and text, ~~must be read together, as they are often in the form of questions and answers, must be read together.~~

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

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

§ 180.110 Do terms in this part have special meanings?

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

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition ~~Regulation~~Regulations (48 CFR part 9, subpart 9.4);



## Unofficial Comparison Version

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

### **§ 180.115 What do Subparts A through I of this part do?**

Subparts A through I ~~of this part~~ provide for ~~the~~ reciprocal exclusion of persons who have been excluded under the Federal Acquisition ~~Regulation, Regulations~~ and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

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

Portions of subparts A through I ~~of this part~~ (see table at § 180.100(b)) apply to you if you are a—:

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment ~~or~~for suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

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

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude ~~from Federal programs~~ persons who are not presently responsible ~~from Federal programs~~.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

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

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

- (a) Be a participant in a Federal agency transaction that is a covered transaction; or
- (b) Act as a principal of a person participating in one of those covered transactions.

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

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the ~~Federal~~ agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the ~~governmentwide~~ ~~government-wide~~ policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

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

~~If any~~When a Federal agency excludes a person under Executive Order 12549 or Executive Order 12689, on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the ~~FAR~~Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect ~~in~~on Federal procurement transactions.

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

~~If any~~When a Federal agency excludes a person under the Federal Acquisition Regulations (FAR) on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has a reciprocal effect ~~in~~on Federal nonprocurement transactions.

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

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

**§ 180.155 How do I know if a person is excluded?**

Check the ~~Governmentwide~~System for Award Management (SAM.gov) Exclusions (~~SAM Exclusions~~) to determine whether a person is excluded. The General Services Administration (GSA) maintains ~~the~~SAM.gov Exclusions and makes it available, as detailed in ~~Subpart~~subpart E ~~of this part~~. When a Federal agency takes ~~an~~ action to exclude a person under

the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into ~~the~~ SAM.gov Exclusions.

## Subpart B—Covered Transactions

### § 180.200 What is a covered transaction?

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

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

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

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

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

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C ~~of this part~~. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D ~~of this part~~.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—:

## Unofficial Comparison Version

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

### **§ 180.210 Which nonprocurement transactions are covered transactions?**

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

### **§ 180.215 Which nonprocurement transactions are not covered transactions?**

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—:

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

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

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

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, ~~if~~when a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

## Unofficial Comparison Version

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

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

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

(g) Any other transaction if—:

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

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

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements, or commitments with the United States. Federal-awarding agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in ~~the System for Award Management~~SAM.gov Exclusions-List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States, ~~pursuant to~~ (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017, ~~unless the~~). The head of a Federal agency ~~grants~~may grant an exception ~~pursuant to~~to this requirement ~~under~~ 2 CFR 180.135 and with the concurrence of the OMB Director.

### § 180.220 Are any procurement contracts included as covered transactions?

## Unofficial Comparison Version

(a) Covered transactions under this part—:

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded ~~by non-Federal participants in~~under nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction ~~that is~~ covered under § 180.210, and the ~~amount of the~~ contract amount is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, ~~regardless of the amount,~~ is always ~~is~~ a covered transaction, ~~and it does not matter~~ regardless of the amount or who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the ~~appendix~~Appendix to this part.

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

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

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

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

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

As a participant in a transaction, you will know that it is a covered transaction because of the Federal agency regulations governing the transaction, ~~the~~. The appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, ~~will~~ tell you that you must comply with applicable portions of this part.

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

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

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified.

You do this by:

- (a) Checking SAM.gov Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.

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

(a) ~~You as~~As a participant, you may not enter into a covered transaction with an excluded person, ~~unless~~ unless the Federal agency responsible for the transaction grants an exception under § 180.135.



## Unofficial Comparison Version

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive ~~order~~Order, or regulation.

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

(a) ~~You as~~As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should ~~make a decision about~~decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

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

(a) ~~You as~~As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using ~~that person's~~ services ~~of that person~~ in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should ~~make a decision about~~decide whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

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

(a) Yes, ~~you~~ ~~as~~. As a participant, you are responsible for determining whether ~~any of~~ your principals of your covered transactions ~~is~~are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but ~~you~~are not required to, check SAM.gov Exclusions.

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

~~If as~~As a participant, if you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—:

(a) Comply with this subpart as a condition of ~~participation~~participating in the transaction. You may do so using any method(s), unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person ~~with whom~~ the participant enters into a covered transaction at the next lower tier.

### **Disclosing Information—Primary Tier Participants**

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

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

(a) Are presently excluded or disqualified;

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

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with **the** commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

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

As a primary tier participant, ~~your disclosure of~~disclosing unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The **Federal** agency will consider the information when

~~it determines~~determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation ~~that~~ you elect to submit with the disclosed information.

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

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the Federal agency may—:

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
- (b) Pursue any other available remedies, including suspension and debarment.

**§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?**

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that—:

- (a) You failed to disclose information earlier, as required by § 180.335; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

**Disclosing Information—Lower Tier Participants**

**§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

## Unofficial Comparison Version

Before you enter into a covered transaction with a person at the next higher tier, you, as a lower tier participant, must notify that person if you know that you or any of the principals are presently excluded or disqualified.

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

~~If~~When a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

### **§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—:

- (a) You failed to disclose information earlier, as required by § 180.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

## **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

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

(a) ~~You as~~As a Federal agency official, you may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person ~~who is~~ disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive ~~order~~Order, or regulation that is the basis for the person's disqualification.

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

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

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

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

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

(a) ~~You as~~As a Federal agency official, you may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. ~~You~~However, you are not required to continue the transactions, ~~however,~~ and you may consider termination. You should ~~make a decision about~~decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper, and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 180.135.

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

## Unofficial Comparison Version

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

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

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

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

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

(a) Enter into a primary tier covered transaction;

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

(c) Approve a lower tier participant if your Federal agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your Federal agency's approval of the principal is required.

### § 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) ~~You as~~As a Federal agency official, you must check SAM.gov Exclusions when you take any action listed in § 180.425.

(b) You must review the information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

**§ 180.435 What must I require of a primary tier participant?**

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

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

(b) Communicate the requirement to comply with subpart C ~~of this part~~ to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

**§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?**

If a participant knowingly does business with an excluded or disqualified person, ~~you~~, as a Federal agency official, may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

**§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?**

~~If you as~~As a Federal agency official, ~~if you~~ determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may—:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.



**§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?**

~~If you as~~As a Federal agency official, ~~if you~~ determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

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

**§ 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions ~~(SAM Exclusions)??~~**

The SAM.gov Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

**§ 180.505 Who uses SAM.gov Exclusions?**

(a) Federal agency officials use SAM.gov Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use SAM.gov Exclusions to determine if—:

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) ~~Sam~~The SAM.gov Exclusions are available to the general public.

**§ 180.510 Who maintains SAM.gov Exclusions?**

~~The General Services Administration (GSA)~~ maintains SAM.gov Exclusions. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM.gov Exclusions.

**§ 180.515 What specific information is in SAM.gov Exclusions?**

(a) At a minimum, SAM.gov Exclusions ~~indicates~~—**indicate**:

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with ~~cross~~—references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA<sup>7</sup> of the excluded or disqualified person, if available.

(b)

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

(2) Agencies disclose ~~thean individual's SSN of an individual~~ to verify ~~thean individual's~~ identity ~~of an individual~~, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

**§ 180.520 Who places the information into SAM.gov Exclusions?**

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into SAM.gov Exclusions:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under ~~the~~ law;

(c) Information about an excluded or disqualified person, within three business days, after—:

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

**§ 180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?**

If you have questions about a listed person in SAM.gov Exclusions, ask the point of contact for the Federal agency that placed the person's name into SAM.gov Exclusions. You may find the ~~Federal~~ agency point of contact from SAM.gov Exclusions.

**§ 180.530 Where can I find SAM.gov Exclusions?**

You may access SAM.gov Exclusions through the Internet, currently at

*https://www.sam.gov.*

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

**§ 180.600 How do suspension and debarment actions start?**

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it, and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

**§ 180.605 How does suspension differ from debarment?**

Suspension differs from debarment in that—:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of <del>in</del> <del>eligibility</del> ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal <del>proceedings</del> or debarment proceeding	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—:	
(1) <del>Have</del> have adequate evidence that there may be a cause for debarment of a person; and	
(2) <del>Conclude</del> conclude that immediate action is necessary to protect the Federal interest	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

**§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?**

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G ~~of this part~~.

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

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

(a) The suspending or debaring official sends a written notice to the last known street address, facsimile number, or e-mail address of—:

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

**§ 180.620 Do Federal agencies coordinate suspension and debarment actions?**

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one **Federal** agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

**§ 180.625 What is the scope of a suspension or debarment?**

If you are suspended or debarred, the suspension or debarment is effective as follows:

## Unofficial Comparison Version

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—:

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—:

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

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

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

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

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

(b) *Conduct imputed from an organization to an individual, or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any

## Unofficial Comparison Version

organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, ~~corporation, company,~~ or similar arrangement ~~or with the organization's knowledge, approval, or acquiescence,~~ or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

**§ 180.635 May a Federal agency ~~settle a~~ resolve an administrative action in lieu of debarment or suspension ~~action~~?**

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

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

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

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

## Unofficial Comparison Version

(a) Yes,~~the~~. The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.gov Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

### **§ 180.650 May an administrative agreement be the result of a settlement?**

Yes,~~a~~. A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

### **§ 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?**

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement ~~to the designated integrity and performance system~~ in SAM.gov within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

### **§ 180.660 Will administrative agreement information about me in ~~the designated integrity and performance system accessible through SAM~~ SAM.gov be corrected or updated?**

Yes,~~the~~. The suspending or debarring official who entered information into ~~the designated integrity and performance system~~ SAM.gov about an administrative agreement with you:



## Unofficial Comparison Version

(a) Must correct the information within three business days if ~~he or she~~ the official subsequently ~~learns~~ learn that any ~~of the~~ information is erroneous.

(b) Must correct in ~~the designated integrity and performance system~~ SAM.gov, within three business days, the ending date of the period during which the agreement is in effect; if the agreement is amended to extend that period.

(c) Must report ~~to the designated integrity and performance system, within three business days,~~ any other modification to the administrative agreement: ~~in SAM.gov within three business days.~~

(d) Is strongly encouraged to amend the information in ~~the designated integrity and performance system~~ SAM.gov in a timely way to incorporate any update that ~~he or she~~ the official obtains and that could be helpful to Federal ~~awarding~~ agencies who must use the system.

### Subpart G—Suspension

#### § 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F ~~of this part~~, the suspending official may impose suspension only when that official determines that—:

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

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

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

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

## Unofficial Comparison Version

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

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

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

~~(b) An~~2) an indictment, ~~criminal information~~, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual ~~and/or~~ legal matters~~; constitutes adequate evidence for purposes of suspension actions; and~~

(3) other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

### **§ 180.710 When does a suspension take effect?**

A suspension is effective when the suspending official signs the decision to suspend.

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

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you~~—~~:

## Unofficial Comparison Version

- (a) That you have been suspended;
- (b) That your suspension is based on—:
  - (1) An indictment;
  - (2) A **criminal information**;
  - (3) A conviction;
  - ~~(3)~~(4) A civil judgment;
  - (5) Other adequate evidence that you have committed irregularities ~~which~~that seriously reflect on the propriety of further Federal Government dealings with you; or
  - ~~(4)~~ (6) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities **supporting your suspension** in terms sufficient to put you on notice without disclosing **certain evidence in** the Federal Government's ~~evidence~~pending or **contemplated legal proceedings**;
- (d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;
- (e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;
- (f) Of the applicable provisions of this subpart, subpart F ~~of this part~~, and any other **Federal** agency procedures governing suspension ~~decisionmaking~~decision-making; and
- (g) Of the ~~governmentwide~~government-wide effect of your suspension from procurement and nonprocurement programs and activities.

### § 180.720 How may I contest a suspension?

## Unofficial Comparison Version

~~If you as~~As a respondent, if you wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing,~~but~~. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

### § 180.725 How much time do I have to contest a suspension?

(a) As a respondent, you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you—:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

### § 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the suspending official must identify—:

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

**Unofficial Comparison Version**

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

~~(b)~~ Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

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

(a) ~~You as~~ As a respondent, you will not have an additional opportunity to challenge the facts if the suspending official determines that—:

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other ~~finding~~ findings by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Suspension;

## Unofficial Comparison Version

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are ~~not~~ material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

### § 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) ~~You as~~As a respondent, you or your representative must submit any documentary evidence you want the suspending official to consider.

### § 180.745 How is fact-finding conducted?

(a) If fact-finding is conducted—:

(1) You may present witnesses and other evidence, and confront any witness presented;  
and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

(a) The suspending official bases the decision on all information contained in the official record. The record includes—:

(1) All information in support of the suspending official's initial decision to suspend you;  
(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

**§ 180.755 When will I know whether the suspension is continued or terminated?**

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes

upon the suspending official's receipt of final submissions, information, and findings of fact, if any. The suspending official may extend that period for good cause.

**§ 180.760 How long may my suspension last?**

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, ~~if proceedings are not initiated,~~ a suspension may not exceed 12 months ~~if proceedings are not initiated.~~

(b) The suspending official may extend the 12--month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other ~~Federal, State, or local~~ responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12--month period expires to allow the officials an opportunity to request an extension.

**Subpart H—Debarment**

**§ 180.800 What are the causes for debarment?**

A Federal agency may debar a person for—:

(a) Conviction of or civil judgment for—:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;



## Unofficial Comparison Version

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, ~~tax evasion~~violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of ~~an~~ Federal agency program, such as—:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

## Unofficial Comparison Version

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any ~~settlement of other agreement that resolves~~ a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701);  
or

(d) Any other cause ~~of that is~~ so serious or compelling ~~ain~~ nature that it affects your present responsibility.

### **§ 180.805 What notice does the debarring official give me if I am proposed for debarment?**

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you—:

- (a) That the debarring official is considering debarring you;
- (b) ~~Of the~~The reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;
- (c) ~~Of the~~The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) ~~Of the~~The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) ~~Of the governmentwide~~The government-wide effect of a debarment from procurement and nonprocurement programs and activities.

#### **§ 180.810 When does a debarment take effect?**

Unlike a suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

#### **§ 180.815 How may I contest a proposed debarment?**

~~If you as~~As a respondent, if you wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, ~~but~~. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

#### **§ 180.820 How much time do I have to contest a proposed debarment?**

(a) As a respondent, you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you—:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the **Federal** agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the **Federal** agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

**§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?**

(a) In addition to any information and argument in opposition, as a respondent, your submission to the debarring official must identify—:

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

**§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?**

## Unofficial Comparison Version

(a) ~~You as~~As a respondent, you will not have an additional opportunity to challenge the facts if the debarring official determines that—:

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

### **§ 180.835 Are debarment proceedings formal?**

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision on whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

**§ 180.840 How is fact-finding conducted?**

(a) If fact-finding is conducted—:

(1) You may present witnesses and other evidence, and confront any witness presented;  
and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ 180.845 What does the debarring official consider in deciding whether to debar me?**

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—:

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

**§ 180.850 What is the standard of proof in a debarment action?**

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

**§ 180.855 Who has the burden of proof in a debarment action?**

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

**§ 180.860 What factors may influence the debarring official's decision?**

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents ~~and~~/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar

## Unofficial Comparison Version

to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not ~~governmentwide~~government-wide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.



## Unofficial Comparison Version

(l) Whether your organization took appropriate corrective action or **implemented** remedial or protective measures, ~~such as establishing ethics training~~ in the form of procedures, policies, and ~~implementing~~ programs to ~~prevent recurrence~~ effectively address the activity cited as a basis for the debarment.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

~~(s)~~ Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) Other factors that are appropriate to the circumstances of a particular case.

### **§ 180.865 How long may my debarment last?**

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment

## Unofficial Comparison Version

should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

### **§ 180.870 When do I know if the debarring official debar me?**

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information, and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 180.615, that the official decided, either—:

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

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

(iv) Advises you that your debarment is effective for covered transactions and contracts

that are subject to the Federal Acquisition ~~Regulation~~Regulations (48 CFR chapter 1~~7~~.)

throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

**§ 180.875 May I ask the debaring official to reconsider a decision to debar me?**

Yes, ~~as~~. ~~As~~ a debarred person, you may ask the debaring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must ~~put~~submit your request in writing and support it with documentation.

**§ 180.880 What factors may influence the debaring official during reconsideration?**

The debaring official may reduce or terminate your debarment based on—:

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debaring official finds appropriate.

**§ 180.885 May the debaring official extend a debarment?**

(a) Yes, ~~the~~. ~~The~~ debaring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debaring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debaring official decides that a debarment for an additional period is necessary, the debaring official must follow the applicable procedures in this subpart, and subpart F ~~of this part~~, to extend the debarment.

**Subpart I—Definitions**

**§ 180.900 Adequate evidence.**

*Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

**§ 180.905 Affiliate.**

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to—:

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or

(e) A business entity ~~which has been~~ organized following the exclusion of a person ~~which has~~with the same or similar management, ownership, or principal employees as the excluded person.

**§ 180.910 Agent or representative.**

*Agent or representative* means any person who acts on behalf of; or who is authorized to commit a participant in a covered transaction.

**§ 180.915 Civil judgment.**

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or other disposition which creates a civil liability for the complained of wrongful acts; or a final determination of liability under the Program Fraud Civil Remedies Act of ~~1988~~1986 (31 U.S.C. 3801–3812).

**§ 180.920 Conviction.**

*Conviction* means—:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

**§ 180.925 Debarment.**

*Debarment* means an action taken by a debarring official under Subpart H ~~of this part~~ to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition ~~Regulation~~Regulations (48 CFR chapter 1). A person so excluded is debarred.

**§ 180.930 Debarring official.**

*Debarring official* means ~~an~~ **Federal** agency official who is authorized to impose debarment. A debarring official is either—:

(a) The agency head; or

(b) An official designated by the agency head.

**§ 180.935 Disqualified.**

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other

than Executive Orders 12549 and 12689)), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. ~~276(a)~~;3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368)), and

Executive Order 11738 (~~3 CFR, 1973 Comp., p. 79938~~ FR 25161).

#### **§ 180.940 Excluded or exclusion.**

*Excluded or exclusion* means—:

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

#### **§ 180.945 System for Award Management (SAM.gov) Exclusions ~~(SAM Exclusions)~~.**

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

#### **§ 180.950 Federal agency.**

*Federal agency* means any United States executive department, military department, defense agency, or any other ~~agency of the~~ executive branch. ~~Other agency.~~ For the purposes of this part, other agencies of the Federal Government are not considered “agencies” ~~for the purposes of this part~~ unless they issue regulations adopting the ~~governmentwide~~ government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

**§ 180.955 Indictment.**

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense ~~shall~~will be given the same effect as an indictment.

**§ 180.960 Ineligible or ineligibility.**

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

**§ 180.965 Legal proceedings.**

*Legal ~~proceedings~~proceeding* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

**§ 180.970 Nonprocurement transaction.**

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to, the following:

- (1) Grants;
- (2) Cooperative agreements;
- (3) Scholarships;
- (4) Fellowships;
- (5) Contracts of assistance;
- (6) Loans;
- (7) Loan guarantees;

- (8) Subsidies~~;~~;
- (9) Insurances~~;~~;
- (10) Payments for specified uses~~;~~; and
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

**§ 180.975 Notice.**

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 180.615.)

**§ 180.980 Participant.**

*Participant* means any person who submits a proposal for or ~~who~~ enters into a covered transaction, including an agent or representative of a participant.

**§ 180.985 Person.**

*Person* means any individual, corporation, partnership, association, unit of government, or legal entity, ~~however~~ **regardless of how** organized.

**§ 180.990 Preponderance of the evidence.**

*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**§ 180.995 Principal.**

*Principal* means—:



## Unofficial Comparison Version

(a) An officer, director, owner, partner, principal investigator, or ~~other~~another person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—:

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

### § 180.1000 Respondent.

*Respondent* means a person against whom ~~an~~ a Federal agency has initiated a debarment or suspension action.

### § 180.1005 State.

(a) *State* means—:

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a ~~state~~State.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

### § 180.1010 Suspending official.

## Unofficial Comparison Version

(a) *Suspending official* means ~~an~~ Federal agency official ~~who is~~ authorized to impose suspension. The suspending official is either:

- (1) The agency head; or
- (2) An official designated by the agency head.

### § 180.1015 Suspension.

*Suspension* is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition ~~Regulation~~ Regulations (48 CFR chapter 1) for a temporary period, pending completion of ~~an~~ Federal agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

### § 180.1020 Voluntary exclusion or voluntarily excluded.

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

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

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

### § 182.5 What does this part do?

This part provides ~~Office of Management and Budget (OMB)~~ guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. ~~701-7078~~ 101-8106,

as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

**§ 182.10 How is this part organized?**

This part is organized ~~into~~ two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F ~~of this part~~.

(b) Subparts A through F ~~of this part~~ contain uniform ~~governmentwide~~ government-wide policies and procedures for Federal agency use to specify the—:

- (1) Types of awards that are covered by drug-free workplace requirements;
- (2) Drug-free workplace requirements with which a recipient must comply;
- (3) Actions required of ~~an~~ Federal agency awarding official; and
- (4) Consequences of a violation of drug-free workplace requirements.

**§ 182.15 To whom does the guidance apply?**

This part provides ~~OMB~~ guidance ~~only~~ to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of ~~the~~ this guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

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

To comply with the requirement in Section 41 U.S.C. ~~7058106~~ for ~~Governmentwide~~ government-wide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-

free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

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

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that Federal agency's Federal awards ~~that are~~ consistent with ~~the~~ this guidance ~~in this part~~. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect ~~for~~ on that Federal agency's awards.

(b) Must address some matters for which the guidance in this part gives the Federal agency discretion. Specifically, the regulation must—:

(1) State whether the Federal agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or

(ii) Requires the recipient to send the notification to the Federal agency awarding official or their designee for each ~~agency~~ Federal award, ~~or to his or her official designee~~.

(2) Either:

(i) State that the Federal agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the Federal agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

**§ 182.30 Where does a Federal agency implement the guidance?**

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

~~§ 182.35 By when must a Federal agency implement the guidance?~~

~~Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of this part and issue final regulations within eighteen months of the guidance.~~

**§ 182.40 How is the guidance maintained?**

The OMB publishes proposed changes to the guidance in the Federal Register for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

**Subpart A—Purpose and Coverage**

**§ 182.100 How is this part written?**

(a) This part uses a “plain language” format to make it easier for the general public and business community to use and understand. The section headings and text, ~~must be read together, as they are~~ often in the form of questions and answers, ~~must be read together.~~

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

**§ 182.105 Do terms in this part have special meanings?**

This part uses terms that have special meanings. Those terms are defined in subpart F ~~of this part.~~

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

Subparts A through F ~~of this part~~ specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

**§ 182.115 Does this part apply to me?**

(a) Portions of this part apply to you if you are either—:

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§ 182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

If you are * * *	See subparts * * *
(1) a recipient who is not an individual	A, B and E.
(2) a recipient who is an individual	A, C and E.
(3) a Federal agency awarding official	A, D and E.

**§ 182.120 Are any of my Federal assistance awards exempt from this part?**

This part does not apply to any award to which the Federal agency head, or ~~his or her~~their designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

**§ 182.125 Does this part affect the Federal contracts that I receive?**

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of

1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in ~~chapter~~Chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

## **Subpart B—Requirements for Recipients Other Than Individuals**

### **§ 182.200 What must I do to comply with this part?**

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part.

The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees ~~who are~~ convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

### **§ 182.205 What must I include in my drug-free workplace statement?**

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, ~~he or she~~ **the employee**:

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

(2) Must notify you in writing if ~~he or she~~ **the employee** is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

**§ 182.210 To whom must I distribute my drug-free workplace statement?**

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

**§ 182.215 What must I include in my drug-free awareness program?**

You must establish an ongoing drug-free awareness program to inform employees about—:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

**§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?**

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:



Unofficial Comparison Version

If * * *	Then you * * *
(a) the performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program	may ask the <b>Federal</b> agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the <b>Federal agency</b> awarding official.

**§ 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?**

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—:

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was

working. It must be sent to every **Federal agency** awarding official or ~~his or her official~~their designee, unless the Federal agency has specified a central point for the receipt of the notices.

## Unofficial Comparison Version

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or ~~either another~~ appropriate agency.

### § 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each **Federal** agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—:

(1) To the **Federal** agency **awarding** official that is making the **Federal** award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the **Federal** award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for ~~an~~ **Federal** award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (~~e.g., for example,~~ all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Federal agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the Federal award, you must inform the Federal agency awarding official.

### Subpart C—Requirements for Recipients Who Are Individuals

#### § 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal ~~agency~~ award, if you are an individual recipient, you must agree that—:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the Federal award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Federal award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or ~~other~~their designee for each Federal award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected Federal award.

### Subpart D—Responsibilities of Federal Agency Awarding Officials

#### § 182.400 What are my responsibilities as ~~ana~~ Federal agency awarding official?

## Unofficial Comparison Version

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—:

- (a) Subpart B ~~of this part~~, if the recipient is not an individual; or
- (b) Subpart C ~~of this part~~, if the recipient is an individual.

### Subpart E—Violations of This Part and Consequences

#### § 182.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Federal agency head or ~~his or her~~their designee determines, in writing, that—:

- (a) The recipient has violated the requirements of subpart B ~~of this part~~; or
- (b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good-faith effort to provide a drug-free workplace.

#### § 182.505 How are violations of this part determined for recipients who are individuals?

~~A~~A recipient who is an individual ~~recipient~~ is in violation of the requirements of this part if the Federal agency head or ~~his or her~~their designee determines, in writing, that—:

- (a) The recipient has violated the requirements of subpart C ~~of this part~~; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

#### § 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the Federal agency may take one or more of the following actions—:

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under the **Federal** agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180~~);~~) for a period not to exceed five years.

**§ 182.515 Are there any exceptions to those actions?**

~~The~~For a particular award, the **Federal** agency head may waive ~~with respect to a particular award~~, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**Subpart F—Definitions**

**§ 182.605 Award.**

*Award* means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the ~~Governmentwide~~government-wide rule that implements OMB Circular A-102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (~~i.e.,~~ that is, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

**§ 182.610 Controlled substance.**

*Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

**§ 182.615 Conviction.**

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

**§ 182.620 Cooperative agreement.**

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

**§ 182.625 Criminal drug statute.**

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

**§ 182.630 Debarment.**

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

**§ 182.635 Drug-free workplace.**

*Drug-free workplace* means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

**§ 182.640 Employee.**

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—:

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., for example, volunteers, even if used to meet a matching cost sharing requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

**§ 182.645 Federal agency or agency.**

*Federal agency or agency* means any United States executive department, military department, government corporation, government-controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

**§ 182.650 Grant.**

*Grant* means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States; rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

**§ 182.655 Individual.**

*Individual* means a natural person.

**§ 182.660 Recipient.**



## Unofficial Comparison Version

*Recipient* means any individual, corporation, partnership, association, unit of government (except a Federal agency)), or legal entity, ~~however~~ regardless of how it is organized, that receives an award directly from a Federal agency.

### § 182.665 State.

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 182.670 Suspension.

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

9. Revise part 183, consisting of §183.5 through appendix A to part 183, to read as follows:

## **PART 183—NEVER CONTRACT WITH THE ENEMY**

### **§ 183.5 Purpose of this part.**

This part provides guidance to Federal-awarding agencies on the implementation of the Never Contract with the Enemy requirements applicable to certain grants and cooperative agreements, as specified in subtitle E, title VIII of the National Defense Authorization Act

(NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113--291), as amended by Sec. ~~822820~~ of the National Defense Authorization Act for Fiscal Year ~~2020~~2023 (Pub. L. ~~116-92~~.117-263), hereafter cited as “Never Contract with the Enemy”).

**§ 183.10 Applicability.**

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

(b) All elements of this part are applicable until the date of expiration as provided in law.

**§ 183.15 Responsibilities of Federal ~~awarding~~ agencies.**

(a) Prior to making an award for a covered grant or cooperative agreement (see also § 183.35), the Federal ~~awarding~~ agency must check the current list of prohibited or restricted persons or entities in the System for Award Management (SAM.gov) Exclusions.

(b) The Federal ~~awarding~~ agency may include the award term provided in ~~appendix A of this part~~Appendix A in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(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 covered persons or entities; or

## Unofficial Comparison Version

(2) Fails to exercise due diligence to ensure that ~~none of the~~ funds, including goods and services, received under ~~an executive agency's~~ covered grant or cooperative agreement ~~of an executive agency~~ are provided directly or indirectly to covered persons or entities.

(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 contracts, grants, and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

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

(3) Void in whole or in part any grant, cooperative agreement, ~~or contracts~~ of the executive agency concerned upon a written determination by the head of contracting activity or ~~either another~~ appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

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

### § 183.20 Reporting responsibilities of Federal ~~awarding~~ agencies.

## Unofficial Comparison Version

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

(b) When a Federal ~~awarding~~ agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the ~~action as a termination as a Termination for Material Failure~~ material failure to ~~Comply~~ comply in the ~~Office of Management and Budget (OMB) designated integrity and performance system accessible through SAM (currently the.gov. Federal Awardee agencies must use the Contractor Performance and Integrity Information Assessment Reporting System (FAPIS)). CPARS~~ to enter or amend information in SAM.gov.

(c) The Federal ~~awarding~~ agency ~~shall~~ must document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section ~~shall~~ must include the following:

(1) The executive agency taking such action.

## Unofficial Comparison Version

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

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

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

(e) Each report referenced in paragraph (c)(2) of this section ~~shall~~ must include the following:

(1) The executive agency concerned.

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

(f) For each instance in which an executive agency exercised the additional authority to examine recipient and lower tier entity (~~e-g-,~~for example, subrecipient or contractor) records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following:

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

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

### **§ 183.25 Responsibilities of recipients.**

(a) Recipients of covered grants or cooperative agreements must fulfill the requirements outlined in the award term provided in ~~appendix~~Appendix A to this part.

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

### **§ 183.30 Access to records.**

**Unofficial Comparison Version**

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal ~~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,101(a)(13)~~, means a military operation that—:

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

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, ~~12301a,12301(a)~~, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. ~~7123713~~ 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:

## Unofficial Comparison Version

- (1) The United States Africa Command.
- (2) The United States Central Command.
- (3) The United States European Command.
- (4) The United States Pacific Command.
- (5) The United States Southern Command.
- (6) The United States Transportation Command.

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

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

### **Appendix A to Part 183—Award Terms for Never Contract With the Enemy**

Federal ~~awarding~~ agencies may include the following award terms in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

#### *I. Term 1*

##### *— Prohibition on Providing Funds to the Enemy*

- (a) ~~The recipient~~ You must—:

## Unofficial Comparison Version

(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, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in ~~SAM~~the System for Award Management (SAM.gov) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal ~~awarding~~ agency provides written approval to continue the subaward or contract.

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

(c) The Federal ~~awarding~~ agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal ~~awarding~~ agency becomes aware that ~~the recipient~~you have 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 coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of term)

## II. Term 2



— *Additional Access to Recipient Records*

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

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

(End of term)

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

**Subpart A—Acronyms and Definitions**

**Acronyms**

**§ 200.0 Acronyms.**

~~**Acronym Term**~~

CAS Cost Accounting Standards

## Unofficial Comparison Version

CFR Code of Federal Regulations

~~CMIA Cash Management Improvement Act~~

~~COG Councils Of Governments~~

~~COSO Committee of Sponsoring Organizations of the Treadway Commission~~

~~EPA Environmental Protection Agency~~

~~ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)~~

~~EUI Energy Usage Index~~

F&A Facilities and Administration

FAC Federal Audit Clearinghouse

FAIN Federal Award Identification Number

~~FAPHS Federal Awardee Performance and Integrity Information System~~

FAR Federal Acquisition Regulation

FASB Financial Accounting Standards Board

FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act— - Public Law 109—282, as amended by section 6202(a) of Public Law 110—252-~~;~~ ~~section 3 of Public Law 113-101; section 2(a) of Public Law 117-40 (See 31 U.S.C. 6101)~~

~~FICA Federal Insurance Contributions Act, statutory note)~~

FOIA Freedom of Information Act

FR Federal Register

~~FTE Full-time equivalent~~

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

Unofficial Comparison Version

GASB Government Accounting Standards Board

GAO Government Accountability Office

~~GOCO Government owned, contractor operated~~

GSA General Services Administration

IBS Institutional Base Salary

IHE Institutions of Higher Education

IRC Internal Revenue Code

ISDEAA Indian Self-Determination and Education and Assistance Act

MTC Modified Total Cost

MTDC Modified Total Direct Cost

NFE Non-Federal Entity

~~NOFO Notice of Funding Opportunity~~

OMB Office of Management and Budget

PII Personally Identifiable Information

PMS Payment Management System

~~PRHP Post-retirement Health Plans~~

~~PTE Pass-through Entity~~

~~REUI Relative Energy Usage Index~~

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

~~SFA Student Financial Aid~~

~~SNAP Supplemental Nutrition Assistance Program~~

~~SPOC Single Point of Contact~~

~~TANF Temporary Assistance for Needy Families~~

~~TFM Treasury Financial Manual~~

UEI Unique Entity Identifier

U.S.C. United States Code

VAT Value Added Tax

## § 200.1 Definitions.

~~These are the~~The following is a list of definitions ~~for~~of key terms frequently used in ~~this~~2 CFR part. ~~Different definitions may be~~ 200. Definitions 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 take~~ precedence over the following definitions. However, where the following definitions implement specific statutory requirements that apply government-wide, such as the Single Audit Act, the following definitions take precedence over Federal regulations. For purposes of this part, the following definitions apply:—

*Acquisition cost* means the (total) cost of the asset including the cost to ready the asset for its intended use. ~~Acquisition~~For example, 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~~include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or

## Unofficial Comparison Version

excluded from the acquisition cost in accordance with the ~~non-Federal entity's recipient's or subrecipient'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 and payment schedule, method~~ before the ~~non-Federal entity recipient or subrecipient~~ disburses the funds for program purposes.

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

*Assistance ~~listings refers~~ Listings refer* to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, ~~formerly known as the Catalog of Federal Domestic Assistance (CFDA).~~ (GSA) at SAM.gov.

*Assistance ~~listing~~ Listing number* means a unique number assigned to identify ~~a Federal~~ an Assistance ~~Listings, formerly known as the CFDA Number.~~ Listing.

*Assistance ~~listing~~ Listing program title* means the title that corresponds to the ~~Federal Assistance Listings Number, formerly known as the CFDA program title.~~ Listing number.

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

*Auditee* means any non-Federal entity that ~~expends Federal awards which~~ must be audited under ~~subpart F of~~ this part. (See § 200.501)

## Unofficial Comparison Version

*Auditor* means an auditor who is a public accountant or a Federal, State, local government, or Indian ~~tribe~~Tribe audit organization, ~~which that~~ meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

*Budget* means the financial plan for the Federal award that the Federal ~~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 from the start date of a funded portion of an award to the end date of that funded portion, during which recipients ~~and subrecipients~~ are authorized to ~~expend~~incur financial obligations of the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

*Capital assets* means:

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

(i) Land, buildings (facilities), equipment, and intellectual property (including software)), whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

## Unofficial Comparison Version

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property ~~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.

*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 ~~or~~, local government, or Indian ~~tribe on a centralized basis~~Tribe to its departments and agencies ~~on a centralized basis~~. The costs of these services may be allocated or billed to users.

*Claim* means, depending on the context, either:

(1) A written demand or ~~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~~recipient or group of ~~non-Federal entities~~recipients to which specific provisions or exceptions may apply.

## Unofficial Comparison Version

*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 § 200.344.

*Cluster of programs* means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. “Other clusters” are ~~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~~clusters,” a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332~~(a)~~. A cluster of programs must be considered ~~as~~ one program ~~for~~when determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501~~(e)~~, 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:



## Unofficial Comparison Version

(1) For Institutions of Higher Education (IHEs): Appendix III ~~to this part~~, paragraph C.11.

(2) For nonprofit organizations: Appendix IV ~~to this part~~, paragraph C.2.a.

(3) For State and local governments: Appendix V ~~to this part~~, paragraph F.1.

(4) For Indian ~~tribes~~ Tribes: Appendix VII ~~to this part~~, paragraph D.1.

*Compliance supplement* means an annually updated authoritative source of information for auditors that ~~serves to identify~~ identifies existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

*Computing devices* means machines ~~used to that~~ acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

*Contract* means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services ~~needed to carry out the project or program~~ under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

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

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

## Unofficial Comparison Version

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

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

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal ~~awarding~~ agency in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

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

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

~~*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:~~

## Unofficial Comparison Version

~~(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 a 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, and capital projects, ~~etc.~~ A cost objective may be a major function of the ~~non-Federal entity recipient or subrecipient~~, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost

## Unofficial Comparison Version

activity, as described in subpart E ~~of this part~~. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

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

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

*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.~~

*Discretionary award* means an award in which the Federal ~~awarding~~ agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient ~~and~~/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

*Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost ~~which~~that equals or exceeds the lesser of the capitalization level established by the ~~non-Federal entity~~recipient or ~~subrecipient~~ for financial statement purposes, or \$510,000. See ~~also the~~this section’s definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* ~~in this section~~.

## Unofficial Comparison Version

*Expenditures* means charges made by a ~~non-Federal entity~~ recipient or subrecipient 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~~ recipient or subrecipient for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

*Federal agency* ~~means~~ has the meaning in paragraph (2) of this definition unless the context clearly indicates that the more general meaning in paragraph (1) is intended:

Unofficial Comparison Version

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

(2) an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f) that provides a Federal award directly to a recipient.

See also definitions of Federal award and recipient.

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

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

(1)

(i) The Federal financial assistance that a recipient receives directly from a Federal ~~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 of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

## Unofficial Comparison Version

(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~~ government-owned, contractor- operated (GOCO) 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.

~~*Federal awarding agency means*~~ signed (physically or digitally) the Federal award or when an alternative binding agreement, consistent with the ~~Federal agency that provides a Federal award directly to a non-Federal entity~~ requirements of 31 U.S.C. 1501, is reached with the recipient.

*Federal financial assistance* means:

(1) Assistance that ~~non-Federal entities~~ recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

## Unofficial Comparison Version

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

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

(3) For § 200.216, Federal financial assistance includes assistance that ~~non-Federal entities~~ recipients or subrecipients receive or administer in the form of:

- (i) Grants;
- (ii) Cooperative agreements;
- (iii) Loans; and
- (iv) Loan Guarantees.

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

*Federal interest* means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

- (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and
- (2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.



## Unofficial Comparison Version

*Federal program* means:

- (1) All Federal awards which are assigned a single Assistance Listings Number.
- (2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

- (i) Research and development (R&D);
- (ii) Student financial aid (SFA); and
- (iii) “Other clusters,” as described in the definition of *cluster of programs* in this section.

*Federal share* means the portion of the Federal award costs paid using Federal funds.

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

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

~~*Financial obligations*, when referencing a recipient's or subrecipient's use of funds under a Federal award,~~ means orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that result in expenditures by a recipient or subrecipient under a Federal award.

## Unofficial Comparison Version

*Fixed amount ~~awards~~award* means a type of grant or cooperative agreement ~~under~~pursuant to which the Federal ~~awarding~~agency or pass-through entity provides a specific ~~level~~amount of ~~support~~funding without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the ~~non-recipient or subrecipient and the~~ Federal ~~entity and Federal~~ ~~awarding~~agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

*For-profit organization* generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

- (1) An “S corporation” incorporated under Subchapter S of the Internal Revenue Code;
- (2) A corporation incorporated under another authority;
- (3) A partnership;
- (4) A limited liability company or partnership; and
- (5) A sole proprietorship.

*Foreign organization* means an entity that is:

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

## Unofficial Comparison Version

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

(4) An organization located in a country other than the United States not recognized as a foreign public entity.

*Foreign public entity* means:

- (1) A foreign government or foreign governmental entity;
- (2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288—288f);
- (3) An entity owned (in whole or in part) or controlled by a foreign government; or
- (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

*General purpose equipment* means equipment ~~which~~that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

## Unofficial Comparison Version

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

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

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

(1) Is used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal ~~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 of the Federal ~~awarding~~ agency in carrying out the activity contemplated by the Federal award.

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

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

## Unofficial Comparison Version

*Highest-level owner* means the entity that owns or controls an immediate owner of ~~the offeror, an applicant~~ or that owns or controls one or more entities that control an immediate owner of ~~the offeror, an applicant~~. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204--17).

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

*Improper payment* means:

~~(1) Any~~ a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. ~~The term improper payment includes: any payment to an ineligible recipient; any payment for an ineligible good or service; any duplicate payment; any payment for a good or service not received, except for those payments where authorized by law; any payment that is not authorized by law; and any payment that does not account for credit for applicable discounts. See OMB Circular A-123 Appendix C, Requirements for Payment Integrity Improvement for additional definitions and guidance on the requirements for payment integrity.~~

~~(i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).~~

## Unofficial Comparison Version

~~Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.~~

~~(ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.~~

~~(iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.~~

~~(iv) A "questioned cost" (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.~~

~~(v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.~~

~~(vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.~~

## Unofficial Comparison Version

~~(2) See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) “What is an improper payment?” Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.~~

*Indian ~~tribe~~Tribe* means any Indian ~~tribe~~Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians ~~(. See 25 U.S.C. 450b5304(e)).-See). This includes any Indian Tribe identified in the~~ annually published Bureau of Indian Affairs list of “*Indian Entities Recognized and Eligible to Receive Services-*” and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

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

*Indirect (facilities & administrative (F&A)) ~~costs~~cost* means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. ~~It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served, 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.

## Unofficial Comparison Version

*Indirect cost rate proposal* means the documentation prepared by a ~~non-Federal entity~~ recipient to substantiate its request ~~for the establishment of~~ to establish an indirect cost rate as described in appendices III through VII and ~~appendix~~ Appendix IX to this part.

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

*Institution of Higher Education (IHE)* is defined at 20 U.S.C. 1001.

*Intangible property* means property having no physical existence, such as trademarks, copyrights, ~~patents and~~ data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property, such as loans, notes and other debt instruments, lease agreements, ~~stock~~ stocks and other instruments of property ownership ~~(whether the property is of either tangible or intangible)~~.

property ownership, such as intellectual property, software, or software subscriptions/licenses. *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See ~~also the~~ this section's definitions of *cost objective* and *final cost objective* ~~in this section~~.

*Internal control* for ~~non-Federal entities~~ recipients and subrecipients means:

(1) Processes designed and implemented by ~~non-Federal entities~~ recipients and subrecipients to provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) Effectiveness and efficiency of operations;



## Unofficial Comparison Version

- (ii) Reliability of reporting for internal and external use; and
- (iii) Compliance with applicable laws and regulations.

~~(2) Federal awarding agencies~~ *Key Personnel* means any individuals (including employees and contractors) working under a Federal award that are ~~required~~ designated in the Federal award as being particularly integral or meaningful to ~~follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.~~ the program.

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

(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~~ pledges for the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

## Unofficial Comparison Version

(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~~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.

## Unofficial Comparison Version

*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 an individual procurement transaction for~~ supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a ~~non-Federal entity's recipient's or subrecipient's~~ small purchases ~~using informal procurement methods~~ as ~~defined~~ set forth in § 200.320.

*Micro-purchase threshold* means the dollar amount at or below which a ~~non-Federal entity recipient or subrecipient~~ may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the ~~non-Federal entity recipient or subrecipient~~ and approved by the cognizant agency for indirect costs.

*Modified Total Direct Cost (MTDC)* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first ~~\$2550,000~~ 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

## Unofficial Comparison Version

excess of \$~~2550~~,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

*Non-discretionary award* means an award made by the Federal ~~awarding~~ agency to specific recipients in accordance with statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency has ~~no ability to~~ cannot exercise ~~judgement~~ judgment (“discretion”). A non-discretionary award amount could be ~~determined~~ specifically determined or by formula.

*Non-Federal entity (NFE)* means a State, local government, Indian ~~tribe~~ Tribe, Institution 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 organization’s operations ~~of the organization~~; and

(4) Is not an IHE.

*Notice of funding opportunity* means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal ~~awarding~~ agency. The notice of funding opportunity provides information on the award, ~~such as~~ who is eligible to apply, the

## Unofficial Comparison Version

evaluation criteria for ~~selection of an awardee~~, selecting a recipient or subrecipient, the required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

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

*Oversight agency for audit* means the Federal ~~awarding~~ agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a ~~non-Federal entity recipient or subrecipient~~ unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the ~~non-Federal entity recipient or subrecipient~~, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal ~~awarding~~ agency ~~which~~ that is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

*Participant* generally means an individual who is not a recipient or subrecipient staff member or consultant, or an individual who is developing or leading the implementation of the Federal award; but rather attending, benefitting from, or is otherwise playing a role in the overall program activities. Examples include, community members participating in a community

## Unofficial Comparison Version

outreach program, members of the public whose perspectives or input are sought as part of a program, exchange students, or conference attendees.

*Participant support costs* means direct costs ~~for items~~ that support participants and their involvement in a Federal award, such as stipends ~~or~~, subsistence allowances, travel allowances, ~~and~~ registration fees, dependent care, and per diem paid directly to or on behalf of participants ~~or trainees (but not employees) in connection with conferences, or training projects.~~

*Pass-through entity (PTE)* means a ~~non-Federal entity~~ recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program.

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

*Period of performance* means the ~~total-estimated-time~~ during which the recipient and subrecipient must perform and complete the work authorized under the Federal award. It is the time interval between the start ~~of an initial Federal award and the planned~~ and end date of a Federal award, which may include one or more funded portions, or budget periods. ~~Identification of the~~ The period of performance ~~in the Federal award per § 200.211(b)(5)~~ does not commit the ~~awarding~~ Federal agency to fund the award beyond the currently approved budget period.

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

## Unofficial Comparison Version

*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~~ Some 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~~. ~~Public PII~~ includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not ~~anchored/attached~~ to any single category of information or technology. ~~Rather/Instead~~, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that ~~could be used to identify an individual~~ when combined with other available information, ~~could be used to identify an individual~~.

*Prior approval* means the written approval by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

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

## Unofficial Comparison Version

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. See also 35 U.S.C. 200--212 "Disposition of Rights in Educational Awards", which applies to inventions made under Federal awards.

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

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

*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 type~~ type of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This ~~definition~~ definition does not include PII that ~~is required by law to~~ must be disclosed by law. See ~~also the~~ this section's definition of *Personally Identifiable Information (PII)* ~~in this section~~.

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

(1) *Questioned cost* means ~~a cost that is questioned by the auditor because of an audit finding;~~

~~(1) Which resulted~~ amount, expended or received from a ~~violation or possible violation of a statute, regulation~~ Federal award, that in the auditor's judgment:

(i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of ~~the~~ Federal award, ~~including for funds used to match Federal funds;~~;



## Unofficial Comparison Version

~~(2) Where the costs, at (ii) At the time of the audit, are not supported by~~ lacked adequate documentation to support compliance; or

~~(3) Where the costs incurred appear (iii) Appeared~~ unreasonable and ~~did~~ 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 the definition of Improper payment in this section).~~

(2) The questioned cost amount under (1)(ii) is calculated as if the portion of a transaction that lacked adequate documentation were confirmed noncompliant.

(3) There is no questioned cost solely because of:

(i) Deficiencies in internal control; or

(ii) Noncompliance with reporting requirements if this noncompliance does not affect the amount expended or received from the Federal award.

(4) *Known questioned cost* means a questioned cost specifically identified by the auditor. Known questioned costs are a subset of likely questioned costs.

(5) *Likely questioned cost* means the auditor's best estimate of total questioned costs, not just the known questioned costs. Likely questioned costs are developed by extrapolating from audit evidence obtained, for example, by projecting known questioned costs identified in an audit sample to the entire population from which the sample was drawn. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.

## Unofficial Comparison Version

*Real property* means land, including land improvements, structures ~~and~~, appurtenances thereto, ~~and legal interests in land such as a fee title, licenses, rights of way, easements,~~ but excludes moveable machinery and equipment.

*Recipient* means an entity, ~~usually but not limited to non-Federal entities~~ that receives a Federal award directly from a Federal ~~awarding agency~~; ~~to carry out an activity under a Federal program~~. The term recipient does not include subrecipients or individuals that are ~~participants and~~ beneficiaries of the award.

*Renewal award* means an award made ~~subsequent to an expiring~~ after the expiration of a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. ~~A renewal award's~~ The start date ~~will begin~~ of a renewal award begins a ~~new and~~ distinct period of performance.

*Research and Development (R&D)* means all ~~basic and applied~~ research activities, ~~both basic and applied,~~ and all development activities ~~that are~~ performed by ~~non-Federal entities~~ a recipient or subrecipient. The term research also includes activities involving the training of individuals in research techniques where such activities ~~utilize~~ use 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~~ the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research ~~directed toward the production of~~ to produce useful materials, devices, systems, or methods, including ~~design~~ designing and ~~development of~~ developing prototypes and processes.

## Unofficial Comparison Version

*Simplified acquisition threshold* means the dollar amount below which a ~~non-Federal entity~~ recipient or subrecipient may purchase property or services using small purchase methods (see § 200.320). ~~Non-Federal entities~~ Recipients and subrecipients adopt small purchase procedures ~~in order~~ to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold ~~for set in the FAR at 48 CFR part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary~~ procurement activities administered under Federal awards ~~is set by the FAR at 48 CFR part 2, subpart 2.1.~~ The ~~non-Federal entity~~ recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. ~~However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold.~~ Recipients and subrecipients should also determine if local government ~~laws on~~ purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

*Special purpose equipment* means equipment ~~which~~ that 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, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

*State* means any ~~state~~ 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.

## Unofficial Comparison Version

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

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to ~~carry~~ contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or ~~payments~~ to an individual that is a ~~beneficiary of a~~ Federal program beneficiary. 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~~. It does not include an individual that is a ~~Federal program beneficiary of such award or participant~~. 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 entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

~~Supplies~~ *Supply* means all tangible personal property other than those described in the ~~equipment~~ definition ~~of equipment in this section~~. A computing device is a supply if the acquisition cost is ~~less than~~ below the lesser of the capitalization level established by the ~~non-~~

## Unofficial Comparison Version

~~Federal entity~~ recipient or subrecipient for financial statement purposes or \$510,000, regardless of the length of its useful life. See ~~also the~~ this section's definitions of *computing devices* and *equipment* ~~in this section.~~

*Telecommunications cost* means the cost of using communication ~~and telephony~~ technologies such as mobile phones, ~~land lines~~ landlines, and ~~the~~ internet.

*Termination* means the ~~ending of~~ a Federal agency or pass-through entity takes to ~~discontinue~~ a Federal award, in whole or in part at any time ~~prior to~~ before the planned end date of the period of performance. ~~A Termination does not include discontinuing a Federal award (for example, not issuing continuation funding which is at the discretion of a Federal agency), or a lack of available funds~~ ~~is not a termination.~~

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

- (1) Benefit a federally-assisted project or program ~~Federal award~~; and
- (2) Are contributed by non-Federal third parties, without charge, to a ~~non-Federal~~ ~~entity~~ recipient or subrecipient under a Federal award.

*Unliquidated financial obligations* ~~obligation~~ means, ~~for financial reports prepared on a cash basis~~, financial obligations incurred by the ~~non-Federal entity that have~~ recipient or subrecipient but not ~~been~~ paid (liquidated) ~~for financial reports prepared on a cash basis~~. 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~~ recipient or subrecipient but not recorded.

## Unofficial Comparison Version

*Unobligated balance* means the amount of funds under a Federal award that the ~~non-Federal entity~~ recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the ~~non-Federal entity's~~ recipient's or subrecipient'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~~ recipient or subrecipient to obligate.

*Voluntary committed cost sharing* means cost sharing specifically pledged ~~on a voluntary basis~~ voluntarily in the proposal's budget on the part of the ~~non-Federal entity and that~~ recipient or subrecipient, which becomes a binding requirement of ~~the~~ Federal award. See ~~also~~ § 200.306.

### Subpart B—General Provisions

#### § 200.100 Purpose.

(a) *Purpose.*

(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~~ allowed in §§ 200.102 ~~and~~, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides ~~the basis for a systematic and periodic collection and uniform submission by~~ Federal agencies ~~of~~ with the policy for collecting and submitting information on all Federal financial assistance programs to the Office of Management and Budget (OMB) ~~and communicating this information to the public.~~ It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It

## Unofficial Comparison Version

~~prescribes also sets forth how the manner in which~~ General Services Administration (GSA), OMB, and Federal agencies ~~that administer Federal financial assistance programs are to carry out their statutory responsibilities under~~ implement the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D ~~of this part~~ set forth the uniform administrative requirements for ~~grant and cooperative agreements, including the Federal financial assistance.~~ This includes establishing requirements for Federal ~~awarding agency agencies~~ management of Federal ~~grant financial assistance~~ programs before ~~the a~~ Federal award ~~has been~~ made, and ~~the~~ requirements that Federal ~~awarding~~ agencies may impose on ~~non-Federal entities in the~~ recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E ~~of this part~~ establishes principles for determining ~~the~~ allowable costs incurred by ~~non-Federal entities~~ recipients and subrecipients under Federal awards. ~~The~~ These principles are for the purpose of cost determination ~~and are.~~ They do not ~~intended to identify~~ address the circumstances ~~or~~ nor dictate the extent of Federal Government ~~participation in the financing~~ funding of a particular program or project. ~~The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.~~

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F ~~of this part~~ is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). ~~It~~ Subpart F sets forth ~~the~~ standards for ~~obtaining~~ achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities ~~expending~~ administering Federal awards. ~~These~~

~~provisions~~ Subpart F also ~~provide~~ provides the policies and procedures for Federal ~~awarding~~ agencies ~~and/or~~ pass-through entities when using the results of these audits.

~~(e) Guidance on challenges and prizes. For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M-10-11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.~~

**§ 200.101 Applicability.**

(a) *General applicability to Federal agencies.*

(1) ~~The requirements established in this part~~ Subparts A through F 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~~ organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except ~~where the~~ when a 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.~~ laws of a foreign government. If a Federal agency does not apply subpart E to for-profit organizations, the cost principles of the Federal Acquisition Regulations (FAR) will apply. Subpart F only applies to non-Federal entities as defined in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). Federal agencies should apply the requirements to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

(b) *Applicability to different types of Federal awards.*



Unofficial Comparison Version

(1) Throughout ~~this part when~~ subparts A through F, the word “must” ~~is used to~~ indicates a requirement. ~~Whereas, use of the~~ The word “should” or “may” indicates a ~~best practice or~~ recommended approach ~~rather than a requirement~~ and permits discretion.

(2) ~~The following table describes~~ Paragraphs (3) through (6) of this section describe what portions of this part apply to ~~which~~ specific types of Federal ~~awards.~~ financial assistance. The terms and conditions of Federal awards (~~including and the requirements of 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~~ indicated otherwise. ~~This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient statute, regulation, or subrecipient the terms and conditions of a~~ the Federal award. Pass-through entities must comply with the requirements described in ~~subpart D of this part,~~ §§ 200.331 through 200.333, ~~but not~~ and any requirements in this part ~~other sections directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.~~ toward pass-through entities.

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) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A— Acronyms and Definitions	—All	
Subpart B— General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of	—All	

Unofficial Comparison Version

<p><b>The following portions of this Part</b></p>	<p><b>Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):</b></p>	<p><b>Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:</b></p>
<p><del>Interest, 200.113 Mandatory Disclosures</del></p>		
<p><del>§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures</del></p>	<p><del>— Grant Agreements and cooperative agreements</del></p>	<p><del>— 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.</del></p>
<p><del>Subparts C–D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management</del></p>	<p><del>— Grant Agreements and cooperative agreements</del></p>	<p><del>— 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.</del></p>
<p><del>§ 200.203 Requirement to provide public notice of Federal financial assistance programs</del></p>	<p><del>— Grant Agreements and cooperative agreements — Agreements for loans, loan guarantees, interest subsidies and insurance</del></p>	<p><del>— Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.</del></p>
<p><del>§§ 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management</del></p>	<p><del>— All</del></p>	
<p><del>Subpart E—Cost Principles</del></p>	<p><del>— Grant Agreements and cooperative agreements, except</del></p>	<p><del>— Grant agreements and cooperative agreements</del></p>

Unofficial Comparison Version

<p style="text-align: center;"><del>The following portions of this Part</del></p>	<p style="text-align: center;"><del>Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):</del></p>	<p style="text-align: center;"><del>Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:</del></p>
	<p>those providing food commodities</p> <p>— All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated</p>	<p>providing foods commodities:</p> <p>— Fixed amount awards.</p> <p>— Agreements for loans, loans guarantees, interest subsidies and insurance.</p> <p>— Federal awards to hospitals (see Appendix IX Hospital Cost Principles).</p>
<p>Subpart F— Audit Requirements</p>	<p>— Grant Agreements and cooperative agreements</p> <p>— Contracts and subcontracts, except for fixed price contracts and subcontracts, awarded under the Federal Acquisition Regulation</p> <p>— 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</p>	<p>— Fixed price contracts and subcontracts awarded under the Federal Acquisition Regulation.</p>

(3) Subparts A and B *apply* to all Federal financial assistance with the following exceptions:

(i) Sections 200.111, 200.112, and 200.113 *do not apply* to agreements for loans, loan guarantees, interest subsidies, insurance, and procurement contracts under the FAR and subcontracts under those contracts.

## Unofficial Comparison Version

(4) Subparts C and D *apply only* to grants and cooperative agreements with the following exceptions:

(i) Section 200.203 also *applies* to agreements for loans, loan guarantees, interest subsidies, and insurance;

(ii) Section 200.216 also applies to loans and loan guarantees; and

(iii) Sections 200.303 and 200.331 through 200.333 also *apply* to all types of Federal financial assistance.

(5) Subpart E *applies* to grants, cooperative agreements, and certain procurement contracts under the FAR but *does not apply* to the following:

(i) Grants and Cooperative Agreements providing food commodities;

(ii) Fixed Amount Awards;

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance;

(iv) Procurement contracts under the FAR that are not negotiated; and

(v) Federal awards to hospitals (See Appendix IX – Hospital Cost Principles)

(6) Subpart F *only applies* to the following:

(i) Grants and cooperative agreements (including fixed amount awards);

(ii) Contracts and subcontracts awarded under the FAR (except for fixed price contracts and subcontracts);

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Any other form of Federal financial assistance as defined by the Single Audit Act Amendment of 1996.

## Unofficial Comparison Version

(c) *Federal award of a cost-reimbursement contract under the Federal Acquisition Regulations (FAR) to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract ~~under the FAR~~, only subpart D, §§ 200.331 through 200.333, and subparts E and F ~~of this part~~ are incorporated by reference into the contract, ~~but the~~. The requirements of subparts D, E, and F are supplementary to the FAR and the contract. ~~In cases of conflict, the FAR and the terms and conditions of the contract awarded under the FAR shall prevail over the incorporated requirements from this part.~~ When the Cost Accounting Standards (CAS) are applicable to the contract, they ~~also~~ take precedence over the ~~incorporated requirements~~ ~~offrom~~ this part, ~~including subpart F of this part, which are supplementary to the CAS requirements.~~ In addition, costs that are ~~made~~ identified as unallowable under ~~10 U.S.C. 2324(e) and~~ 41 U.S.C. 4304(a) ~~and~~ as ~~described~~ stated in the FAR (48 CFR part 31, subpart 31.2, and 48 CFR 31.603) are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F ~~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) *Governing provisions.* 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~~ in any circumstances where they conflict with the provisions of this part. For agreements with Indian ~~tribes~~, Tribes, this includes the provisions of

Unofficial Comparison Version

the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended; (see 25 U.S.C. ~~450-458ddd-2~~. 5301-5423).

(e) *Program applicability*. Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E ~~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 ~~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) *Additional program applicability*. Except for §§ 200.203 and 200.216, 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:

## Unofficial Comparison Version

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

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

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

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

(v) Medical Assistance (Medicaid) (~~title~~Title XIX of the Act, 42 U.S.C. 1396—1396w—5) not including the State Medicaid Fraud Control program authorized by ~~section~~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~~Title XXI of the Act, 42 U.S.C. 1397aa—1397mm).

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

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (~~Pub. L.~~Public Law 96—422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

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

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

## Unofficial Comparison Version

- (ii) Commodity Assistance (~~section~~Section 6 of the Act, 42 U.S.C. 1755);
  - (iii) Special Meal Assistance (~~section~~Section 11 of the Act, 42 U.S.C. 1759a);
  - (iv) Summer Food Service Program for Children (~~section~~Section 13 of the Act, 42 U.S.C. 1761); and
  - (v) Child and Adult Care Food Program (~~section~~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~~Section 3 of the Act, 42 U.S.C. 1772);
  - (ii) School Breakfast Program (~~section~~Section 4 of the Act, 42 U.S.C. 1773); and
  - (iii) State Administrative Expenses (~~section~~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~~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~~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~~Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

### § 200.102 Exceptions.

- (a) ~~With the exception of OMB Exceptions.~~ Except for subpart F ~~of this part~~, OMB may allow either exceptions to or deviations from requirements of this part for classes of Federal awards ~~or non-Federal entities subject to the~~, or of recipients, subrecipients, or both, when not



## Unofficial Comparison Version

prohibited by statute. For example, OMB may allow exceptions or deviations in support of innovative program designs or emergency situations. Deviation means applying more or less restrictive requirements to a class of Federal awards, recipients, or subrecipients.

(b) *Statutory Exceptions.* When required by Federal statute, a Federal agency does not need OMB approval to allow exceptions to or deviations from requirements of this part ~~when~~ (except for subpart F) for a class of Federal awards or recipients, subrecipients, or both.

(c) *Agency Exceptions.* Federal agencies may allow exceptions to requirements of this part for individual Federal awards, or recipients, or subrecipients on a case-by-case basis when the exceptions are not prohibited by statute. ~~In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.~~

~~(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or and OMB approval is not expressly required by this part. Only the cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.~~

~~(c) The Federal awarding agency may adjust 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. may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal awarding agency may also apply less restrictive requirements when making issuing fixed amount awards as defined in subpart A of this part, (see § 200.1), except for those requirements imposed by statute or in subpart F of this part.~~

~~(d) Federal awarding agencies may 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. See also § 200.206.~~

**§ 200.103 Authorities.**

This part is issued under the following authorities.

(a) Subparts B through D ~~of this part~~ are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management); ~~the Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106); the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224, as amended, codified at 31 U.S.C. 6301-6309); 41 U.S.C. 1101--1131 (the Office of Federal Procurement Policy Act); Reorganization Plan No. 2 of 1970; and Executive Order 11541 (“Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President”); and the Single Audit Act Amendments of 1996; (31 U.S.C. 7501--7507), as well as ~~The Federal Program Information Act (Pub. L. 95-220 and Pub. L. 98-169, as amended, codified at 31 U.S.C. 6101-6106).~~~~

(b) Subpart E ~~of this part~~ is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101--~~1125-1126~~); the Chief Financial Officers Act of 1990 (31 U.S.C. 503--504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, “Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.” ~~OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.~~

## Unofficial Comparison Version

(c) Subpart F ~~of this part~~ is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501--7507). ~~OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.~~

### § 200.104 Supersession.

~~As described in § 200.110, this~~ This part supersedes ~~the following~~ previous OMB guidance ~~documents and regulations~~ issued under ~~title~~ Title 2, subtitle A, chapter I of the Code of Federal Regulations:

~~(a) A-21, “Cost Principles related to uniform administrative requirements, cost principles, and audit requirements for Educational Institutions” (2 CFR part 220);~~

~~(b) A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225) and also Federal Register notice 51 FR 552 (January 6, 1986); awards.~~

~~(c) A-89, “Federal Domestic Assistance Program Information”;~~

~~(d) A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”;~~

~~(e) A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (codified at 2 CFR 215);~~

~~(f) A-122, “Cost Principles for Non-Profit Organizations” (2 CFR part 230);~~

~~(g) A-133, “Audits of States, Local Governments and Non-Profit Organizations”;~~ and

~~(h) Those sections of A-50 related to audits performed under subpart F of this part.~~

### § 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards ~~made~~ subject to this part, ~~all~~ by a Federal agency, this part takes precedence over any administrative requirements,

## Unofficial Comparison Version

program manuals, handbooks, and other non-regulatory materials that are inconsistent with the requirements of ~~this part must be superseded~~ those subparts upon implementation of this part by the Federal agency, except to the extent ~~that~~ they are required by statute or authorized in accordance with ~~the provisions in~~ § 200.102.

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

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

(2) **Incorporating requirements** into the terms and conditions of a Federal award ~~as permitted by Federal statute, regulation, or this part.~~

### **§ 200.106 Agency implementation.**

The specific requirements and responsibilities of Federal agencies ~~and~~, non-Federal entities, **recipients, and subrecipients** are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

### **§ 200.107 OMB responsibilities.**

OMB will review Federal agency regulations and implementation of this part, ~~and~~. **OMB** will provide interpretations of policy requirements and assistance to ensure effective ~~and~~, efficient, **and consistent** implementation. Any exceptions will be subject to approval by OMB. ~~Exceptions will and only be made in particular cases where~~with adequate justification **is presented** from the Federal agency.

**§ 200.108 Inquiries.**

Inquiries ~~from Federal agencies~~ concerning this part may be directed to ~~the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries~~OMB. Inquiries from recipients or subrecipients should be addressed to the Federal ~~awarding~~ agency, ~~the~~ cognizant agency for indirect costs, ~~the~~ cognizant ~~or oversight~~ agency for audit, or ~~the~~ pass-through entity as appropriate.

**§ 200.109 Review date.**

OMB will review this part ~~at least every five years after December 26, 2013, periodically.~~

**§ 200.110 Effective/~~applicability~~ date.**

(a) The standards set forth in this part ~~that affect~~affecting 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 ~~(as of the publication date of the revisions to the guidance)~~ will remain in place until they expire. 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~~the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the ~~revised Uniform Guidance~~revisions to this part (as of the publication date for revisions to ~~the~~this guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

**§ 200.111 English language.**

(a) All Federal financial assistance announcements, ~~applications~~, and Federal award information ~~must~~should be in the English language. ~~Applications must be submitted in the~~

## Unofficial Comparison Version

~~English language~~ and must be in ~~the~~ terms of U.S. dollars. ~~If the~~ However, Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

~~(b) Non-Federal entities~~ agencies, recipients, and subrecipients may issue or translate ~~the~~ Federal award ~~and/or~~ other documents into another language. ~~In the event of inconsistency between any-~~ A Federal agency may translate formal or informal announcements of the availability of Federal funding through a financial assistance program, such as a notice of funding opportunity, when translations may serve to increase the pool of applicants or the participation of a specific community (for example, programs administered in foreign countries where the primary language is not English). There must be official controlling English versions of announcements and award documents.

~~(b)~~ Applications, reports, and official correspondence may be submitted in languages other than English if specified in the notice of funding opportunity or the terms and conditions of the Federal award ~~and any translation into~~.

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

### § 200.112 Conflict of interest.

## Unofficial Comparison Version

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

### § 200.113 Mandatory disclosures.

~~The non-Federal entity or~~ An applicant ~~for~~, recipient, or subrecipient of a Federal award must promptly disclose, ~~in a timely manner, in writing to the Federal awarding agency or pass-through entity~~ all violations whenever they have credible evidence of a violation of Federal criminal law ~~involving fraud, bribery, or gratuity violations~~ potentially affecting the Federal award. ~~Non-Federal entities that have received a Federal award including the term~~ (for example, fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and ~~condition~~ ~~outlined in appendix XII to this part~~ exploitation) or a violation of the civil False Claims Act. (See also 2 CFR 175.105 regarding the obligation to report credible information related to conduct prohibited by the Trafficking Victims Protection Act, 22 U.S.C. 7104c). The disclosure must be made in writing to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General. Recipients and subrecipients are required to report ~~certain~~ ~~civil, criminal, or administrative proceedings to SAM (currently FAPHS)~~ matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

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

#### § 200.200 Purpose.

## Unofficial Comparison Version

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

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

(a) ~~Federal award instrument~~ awards. The Federal ~~awarding~~ agency or pass-through entity must decide on the appropriate ~~instrument~~ type of agreement for ~~the~~ a Federal award (~~i.e., for example, a grant agreement~~, cooperative agreement, ~~subaward~~, or contract) in accordance with **this guidance**. See the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-~~08-6309~~).

(b) *Fixed amount awards*. ~~In addition to the options described in paragraph (a) of this section,~~ The Federal ~~awarding agencies,~~ agency or pass-through ~~entities as permitted in~~ entity (see § 200.333,) may use fixed amount awards (see *Fixed amount awards* in § 200.1) ~~to~~ for which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal ~~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~~ budget based on a reasonable estimate of actual ~~cost~~. ~~Payments are based on meeting specific requirements of the Federal award costs.~~ Accountability ~~is~~ must be based on performance and results, ~~which can be communicated in performance reports or through routine monitoring~~. Except in the case of termination before ~~the~~ completion of the Federal award, there is no ~~governmental~~ review of the



## Unofficial Comparison Version

actual costs incurred by the ~~non-Federal entity in performance of the award~~-recipient or subrecipient under the Federal award. Therefore, no financial reporting is required. This does not absolve the awardee from the record retention requirements contained in sections 200.334 through 200.338. Payments must be based on meeting specific requirements of the Federal award. Some of the ways in which the Federal award may be paid include, but are not limited to:

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

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

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

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

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

(4) At the end of a fixed amount award, the recipient or subrecipient must certify in writing to the Federal ~~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 ~~as~~ agreed to in the Federal award and that all expenditures were incurred in accordance with § 200.403. When the required ~~level of activity or effort was~~activities were not carried out, including fixed amount

## Unofficial Comparison Version

awards paid on a unit price basis under 200.201(b)(1)(ii), the amount of the Federal award must be ~~adjusted~~ reduced by the amount that reflects the activities that were not completed in accordance with the Federal award. When the required activities were completed in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any unexpended funds.

(45) Periodic reports may be established for ~~each Federal award~~ fixed amount awards.

~~(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.~~

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

### § 200.202 Program planning and design.

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

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

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

(3) To align with the strategic goals and objectives within the Federal ~~awarding~~ agency's performance plan and should support the Federal ~~awarding~~ agency's performance measurement, management, ~~customer service initiatives~~, and reporting as required by Part 6 of OMB Circular

A--11 (Preparation, Submission, and Execution of the Budget). ~~The program must also be designed to~~);

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

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

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

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

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

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

## Unofficial Comparison Version

(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 agency~~ must assign the Federal appropriate Assistance ~~Listings as required in this section~~ Listing before making the Federal award unless ~~there are~~ exigent circumstances ~~requiring~~ require otherwise, ~~such as~~ (for example, timing requirements imposed by a Federal 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~~ To the extent practicable, the Federal agency must create, update, and manage Assistance ~~Listings~~ Listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA (in consultation with OMB) to ensure consistent, and accurate information is available to prospective applicants. Assistance Listings should be ~~communicated to the public in plain language~~. Accordingly, Federal ~~awarding~~ agencies must submit the following information to GSA ~~when creating an Assistance Listing~~:

(1) *Program Description, Purpose, Goals, and Measurement*. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the ~~Program Description, Purpose, Goals~~ program description, purpose, goals, and ~~Measurement~~ performance measurement should align with the strategic goals and objectives within the Federal ~~awarding~~ agency's performance plan and should support the Federal ~~awarding~~

## Unofficial Comparison Version

agency's performance measurement, management, ~~customer service initiatives~~, and reporting as required by Part 6 of OMB Circular A--11;

(2) *Identification*. Identification of whether the program ~~makes will issue~~ Federal awards on a discretionary ~~or non-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; ~~(to the extent possible)~~ and associated funding identifier (~~e.g., for example,~~ Treasury Account Symbol(s));

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

(6) *Applicability of Single Audit Requirements*. 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 that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:~~

## Unofficial Comparison Version

The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed. The term openly competed means opportunities that are not directed to one or more specifically identified applicants. To the extent possible, the Federal agency should communicate opportunities to the public in plain language to ensure the announcement is accessible to diverse communities of eligible applicants, including underserved communities. The Federal agency should also make efforts to limit the length and complexity of the announcement and only include the information that is necessary for the effective communication of the program objectives. Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. However, Federal agencies must ensure these resources are made accessible and widely available to all potential applicants; for example, by posting answers to questions and requests on Grants.gov. The Federal agency should make every effort to identify in the NOFO all eligible applicants (for example, different types of nonprofit organizations such as labor unions). The following information must be provided in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal ~~awarding~~ agency must display the following information ~~posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance on Grants.gov~~, 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);

## Unofficial Comparison Version

(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 ~~Listings~~Listing Number(s);

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

(7) Key Dates. Key dates include due dates for ~~submitting~~ applications or Executive Order 12372 submissions, as well as for any letters of intent or ~~pre-applications~~preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the ~~relevant Federal awarding agency~~.Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO states that applications will be evaluated on a “rolling” basis (that is, at different points during a specified period of time), the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision;

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

(9) Agency contact information.

(b) *Availability period*. The Federal ~~awarding~~agency ~~must generally~~should make all funding opportunities available for application for at least 60 calendar days. ~~The~~However, the

## Unofficial Comparison Version

Federal ~~awarding~~ agency may ~~make a determination to have a less than 60 calendar day extend~~ the availability period ~~but~~ of an opportunity as needed. For example, extending the period may be necessary to provide technical assistance to an applicant pool that was not anticipated when the announcement was made or has less experience with applying for Federal financial assistance. The Federal agency may also determine that an availability period of less than 60 days is sufficient for a particular funding opportunity. However, no funding opportunity should be available for less than 30 calendar days unless the Federal agency determines that exigent circumstances ~~require as determined by the Federal awarding agency head or delegate.~~ justify this.

(c) *Full text of funding opportunities.*

(1) The Federal ~~awarding~~ agency must include the ~~following information in the full text of each funding opportunity. For specific instructions on the content required information in this section, refer to appendix I to this part.~~

~~(1) Full programmatic description of the Appendix I for every 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.~~ (2) Federal agencies should ensure that funding



## Unofficial Comparison Version

opportunities are written using plain language. To the extent possible Federal agencies must streamline opportunities to make them accessible, particularly for funding opportunities that are new, targeted to underserved communities, or intended to reach inexperienced applicants.

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

~~§ 200.205 and 200.206.~~

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

~~(7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.~~

**§ 200.205 Federal awarding agency merit review of merit of proposals.**

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

funding opportunity ~~(see appendix. See Appendix I to this part.)~~. See also § 200.204. The Federal ~~awarding~~ agency must also periodically review its merit review process.

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

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

(1) Prior to making a Federal award, the Federal ~~awarding agency is required by~~ agency is required to review eligibility information for applicants and financial integrity information for applicants available in OMB-designated databases per the Payment Integrity Information Act of 2019~~, (Public Law 116-117), the “Do Not Pay Initiative” (31 U.S.C. 3301 note, 3354), and 41 U.S.C. 2313~~ ~~to review information available through any OMB-designated repositories of governmentwide eligibility.~~

(2) The Federal agency is required to review the responsibility and 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 records available in the non-public segment of the OMB-designated integrity and performance system accessible through System for Award Management (SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)).gov) 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. See 41 U.S.C. 2313. The Federal ~~awarding~~ agency must consider all of the information available~~

## Unofficial Comparison Version

~~through FAPHS in SAM.gov~~ with regard to the applicant and any immediate highest-level owner, predecessor (~~i.e.; a non-Federal entity meaning, an organization that is replaced by a successor~~), or subsidiary, identified for that applicant in ~~FAPHS, if applicable. At a minimum, the~~ SAM.gov. See Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013. The information in the system for a prior ~~recipient of a Federal award recipient~~ must demonstrate a satisfactory record of ~~executing administering~~ programs or activities under Federal ~~grants, cooperative agreements, financial assistance~~ or procurement awards, and integrity and business ethics. The Federal ~~awarding~~ agency may make a Federal award to a recipient ~~whothat~~ 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~~ risk associated with the recipient in accordance with § 200.208.

(b) *Risk ~~evaluation~~ Assessment.*

(1) The Federal ~~awarding~~ agency must ~~have in place a framework~~ establish and maintain policies and procedures for ~~evaluating~~ conducting a risk assessment to evaluate the risks posed by applicants before ~~they receive Federal awards. This evaluation~~ issuing Federal awards. This assessment helps identify risks that may affect the advancement toward or the achievement of a project's goals and objectives. Risk assessments assist Federal managers in determining appropriate resources and time to devote to project oversight and monitor recipient progress. This assessment may incorporate ~~results of the evaluation of the applicant's eligibility or elements such as the quality of its application. If the application, award amount, risk associated with the program, cybersecurity risks, and impacts on local jobs and the community. If the~~

## Unofficial Comparison Version

Federal agency determines that the Federal ~~awarding agency determines that a Federal~~ award will be made, ~~special~~ specific conditions that ~~correspond to~~ address the ~~degree of risk~~ assessed risk may be ~~applied to~~ implemented in the Federal award. ~~Criteria~~ The risk criteria to be evaluated must be described in the announcement of the funding opportunity described in § 200.204.

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

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

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

(iii) *History of performance*. The applicant's record ~~in~~ of managing ~~Federal awards, if it is a prior recipient of previous and current~~ Federal awards, including ~~timeliness of~~ compliance with ~~applicable~~ reporting requirements, and 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) *Audit reports and findings*. Reports and findings from audits performed under subpart F ~~of this part~~ or the reports and findings of any other available audits, ~~if applicable;~~ and

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

## Unofficial Comparison Version

(c) *Adjustments to the Risk-based requirements adjustment. Assessment.* The Federal ~~awarding~~ agency may ~~adjust requirements when a~~ modify the risk ~~evaluation indicates that it~~ assessment at any time during the period of performance, which may ~~be merited either pre-~~ justify changes to the terms and conditions of the Federal award ~~or post-award~~. See § 200.208.

(d) *Suspension and debarment compliance.*

(1) The Federal ~~awarding~~ agency must comply with the ~~guidelines on~~ ~~governmentwide~~ government-wide suspension and debarment ~~guidance~~ in 2 CFR part 180; and individual Federal agency suspension and debarment requirements in title 2 of the Code of Federal Regulations. Federal agencies must also require ~~non-Federal entities~~ recipients to comply with these ~~provisions~~ requirements. These ~~provisions~~ requirements restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from ~~or ineligible for participation~~ receiving Federal awards participating in Federal ~~programs or activities~~ awards.

### § 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 and in alignment with OMB-approved, ~~governmentwide~~ government-wide data elements available from the OMB-designated standards lead. ~~Consistent with these requirements,~~ OMB will authorize additional information collections only on a limited basis ~~and consistent with these requirements.~~

## Unofficial Comparison Version

(b) *Information collection.* ~~If applicable, the~~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 already being collected through other means.~~

### § 200.208 Specific conditions.

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

(b) The Federal ~~awarding~~ agency or pass-through entity may adjust specific ~~conditions in the Federal award conditions as needed, in accordance with this section,~~ based on an analysis of the following factors:

~~(1) Based on the criteria set forth in § 200.206;~~

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

(2) The ~~applicant~~recipient's or ~~recipient's~~subrecipient's history of compliance with the ~~general or specific~~ terms and conditions of a Federal ~~award~~awards;

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

(4) A ~~responsibility~~ determination ~~of an applicant or that a recipient-~~

~~(e) Additional-~~ or subrecipient has adequate financial resources to perform the Federal award.

(c) Specific conditions may include ~~items such as~~ the following:

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

## Unofficial Comparison Version

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance ~~within a given performance period;~~

(3) Requiring additional ~~;~~ or more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the ~~non-Federal entity~~ recipient or subrecipient to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) ~~IF~~ Prior to imposing specific conditions, the Federal ~~awarding~~ agency or pass-through entity ~~is imposing additional requirements, they~~ must notify the ~~applicant~~ recipient or ~~non-Federal entity~~ subrecipient as to:

(1) The nature of the ~~additional requirements;~~ specific condition(s);

(2) The reason why the ~~additional requirements are~~ specific condition(s) is being imposed;

(3) The nature of the action needed to remove the ~~additional requirement, if applicable;~~ specific condition(s);

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

(5) The method for requesting ~~reconsideration of the additional requirements imposed.~~ Federal agency or pass-through entity to reconsider imposing a specific condition.

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

### § 200.209 Certifications and representations.

## Unofficial Comparison Version

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~~ a recipient or subrecipient to submit certifications and representations ~~required by Federal statutes, or regulations on an annual basis~~ annually in SAM.gov. Submission may be required more frequently if ~~the non-Federal entity~~ a recipient or subrecipient fails to meet a requirement of a Federal award. ~~When a recipient or subrecipient is provided an exception to the requirements of 2 CFR 25.110, the recipient or subrecipient must submit the appropriate assurance form (for example, SF-424B).~~

### **§ 200.210 Pre-award costs.**

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

### **§ 200.211 Information contained in a Federal award.**

~~A~~The Federal award must include the following information:

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

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



## Unofficial Comparison Version

- (1) Recipient ~~name~~Name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.~~315~~400);
  - (2) Recipient's ~~unique entity identifier~~;Unique Entity Identifier;
  - (3) Unique Federal Award Identification Number (FAIN);
  - (4) Federal Award Date (see Federal award date in § 200.~~201~~1);
  - (5) Period of Performance Start and End Date;
  - (6) Budget Period Start and End Date;
  - (7) Amount of Federal Funds Obligated by this ~~action~~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;
  - (~~11~~12) Federal ~~award description~~,Award Description (to comply with statutory requirements (~~e.g., for example~~, FFATA));
  - (~~12~~13) Name of the Federal ~~awarding~~ agency ~~and~~(including contact information for the awarding official~~;~~),
  - (~~13~~14) Assistance Listings Number and Title;
  - (~~14~~15) Identification of whether the ~~award~~Award is R&D; and
  - (15) Indirect ~~cost rate~~Cost Rate for the Federal award (including if the de minimis rate is charged per § 200.414).
- (c) *General terms and conditions.*

## Unofficial Comparison Version

(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.* Administrative requirements 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~~When 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~~terms and ~~condition~~conditions available in ~~appendix~~Appendix XII ~~of this part~~. See also § 200.113.

(iv) *Future budget periods.* ~~If~~When 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, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal ~~awarding~~ agencies must ~~make~~inform recipients ~~aware, in a clear and unambiguous manner,~~ of the termination provisions in § 200.340, including the applicable termination provisions in the Federal ~~awarding~~ agency's regulations or ~~in~~ ~~ea~~terms and conditions of the Federal award.

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

## Unofficial Comparison Version

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

(4) ~~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.~~ a recipient, auditors, or others. The archive should be located on the Federal agency's website in the same place where current terms and conditions are available.

(d) ~~Federal awarding agency, program, or Federal~~ award specific terms and conditions.

The Federal ~~awarding~~ agency must include ~~within~~ each Federal award any ~~specific~~ 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. See also § 200.208.

Whenever practicable, these specific terms and conditions ~~also~~ should also be ~~shared~~ available on the ~~Federal~~ agency's 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) ~~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~~ Except as noted in ~~this section, for applicable Federal awards~~ paragraph (c), the Federal ~~awarding~~ agency must ~~announce all Federal awards publicly and~~ publish the required Federal award information on ~~a publicly available~~ *USA Spending.gov* in accordance with the

## Unofficial Comparison Version

guidance provided by OMB-designated governmentwide website, and the U.S. Department of the Treasury's DATA Act Information Model Schema (DAIMS).

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

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

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

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

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

### **§ 200.213 Reporting a determination that ~~a non-Federal entity~~an applicant is not qualified for a Federal award.**

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

## Unofficial Comparison Version

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

(2) The total Federal share of the Federal award ~~that otherwise would be made to the non-Federal entity~~ ~~is~~ was 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~~ an applicant is not qualified for a Federal award if they ~~make~~ issue the Federal award ~~to the non-Federal entity and include specific award terms and conditions, as described in accordance with the requirements of § 200.208.~~

(c) If ~~at~~ the Federal ~~awarding~~ agency reports a determination that ~~a non-Federal entity~~ an applicant 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~~ applicant that—:

(1) The determination was made and reported ~~to the designated integrity and performance system accessible through~~ in SAM, gov and ~~include with the notification~~ provides 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 and then archived~~ (See section 872 of Public Law 110—417, as amended ~~(, codified at 41 U.S.C. 2313), then archived~~);

## Unofficial Comparison Version

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

(4) The ~~non-Federal entity~~ applicant may ~~go to the awardee integrity and performance portal~~ review the responsibility/qualification records accessible ~~through~~ in SAM (~~currently the Contractor Performance Assessment Reporting System (CPARS)~~),.gov and comment on any information the system contains about the ~~non-Federal entity itself~~ applicant; and

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

(d) If ~~a~~ the Federal ~~awarding~~ agency enters information into ~~the designated integrity and performance system accessible through~~ SAM.gov about a determination that ~~a non-Federal entity~~ an applicant 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; and

(2) Obtains an update to that information that could be helpful to other Federal ~~awarding~~ agencies, the Federal ~~awarding~~ agency ~~is strongly encouraged to~~ should amend the information in the system ~~to incorporate the update in a timely way~~ within 30 days.

## Unofficial Comparison Version

(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~~ ~~the responsibility/qualification records~~ 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 ~~information~~ 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~~ Recipients and subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, ~~as well as~~ 2 CFR part 180. The regulations in 2 CFR part 180 restrict ~~making Federal~~ awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from ~~receiving or ineligible for participation~~ participating in Federal ~~assistance programs or activities~~ awards.

### § 200.215 Never contract with the enemy.

Federal ~~awarding~~ agencies ~~and~~, recipients, and subrecipients are subject to the ~~regulations~~ guidance implementing Never Contract with the Enemy in 2 CFR part 183. The ~~regulations~~ guidance in 2 CFR part 183 ~~affect~~ affects covered contracts, grants, and cooperative agreements that are expected to exceed \$50,000 ~~with~~ during the period of performance, are

performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

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

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

(1) Procure or obtain;

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

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

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

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



## Unofficial Comparison Version

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

(b) In implementing the prohibition under ~~section 889 of Public Law 115—232, section 889, subsection (f), paragraph (1)~~, heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) ~~See Public Law 115—232, section 889-A~~ A recipient or subrecipient may use covered telecommunications equipment or services for their own purposes (not program activities) provided they are not procured with Federal funds.

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

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

(f) For additional information-

## Unofficial Comparison Version

~~(d) See also, see section 889 of Public Law 115-232 and § 200.471.~~

### § 200.217 Whistleblower Protections

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

### Subpart D—Post Federal Award Requirements

#### § 200.300 Statutory and national policy requirements.

(a) The Federal ~~awarding~~ agency or pass-through entity must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal Law, statutes (including statutes that prohibit discrimination) and public policy regulations, and the requirements: ~~Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.~~ of this part. The Federal ~~awarding~~ agency or pass-through entity must communicate to ~~the non-Federal entity~~ a recipient or subrecipient all relevant public policy requirements, including those contained in general

## Unofficial Comparison Version

appropriations provisions, and incorporate them ~~either~~ directly or by reference in the terms and conditions of the Federal award.

~~(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.~~

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

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

### **§ 200.301 Performance measurement.**

(a) The Federal ~~awarding~~ agency must measure the ~~recipient's~~recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. ~~Program-~~The Federal agency should establish program goals and objectives ~~should be derived from~~during program planning and design. ~~See (see § 200.202 for more information. Where appropriate, the Federal award may~~

## Unofficial Comparison Version

~~include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress.~~

The Federal ~~awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency~~ agency should clearly communicate the specific program goals and objectives in the Federal award, including how the Federal agency will measure the achievement of the goals and objectives, the expected timeline, and information on how the recipient must report the achievement of program goals and objectives. The Federal agency should also clearly communicate in the Federal award any expected outcomes, indicators, targets, baseline data, or data collections that the recipient is responsible for measuring and reporting. The Federal agency must ensure all requirements for measuring performance align with the Federal agency's strategic goals, strategic objectives, or performance goals ~~that are relevant to thea program. See also~~ (see OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6-).

(b) ~~The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance~~ When establishing performance reporting frequency and content, the Federal agency should ~~be established~~ consider what information will be necessary to measure the recipient's progress, ~~to not only allow the~~

## Unofficial Comparison Version

~~Federal awarding agency to understand the recipient progress but also to facilitate identification~~  
~~of identify~~ promising practices ~~among of~~ recipients, and build the evidence upon which the Federal ~~awarding agency's~~ agency makes program and performance decisions ~~are made~~. The Federal agency should not require additional information that is not necessary for measuring program performance. See § 200.328329 for more information on reporting program performance.

(c) ~~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)~~. The Federal ~~awarding~~ Federal agency should also specify in the Federal award any requirements of ~~award recipients'~~ the recipients' participation in a federally--funded ~~evaluation;~~  
~~and any evaluation activities required to be conducted by the Federal award~~ evaluations.

### § 200.302 Financial management.

(a) Each ~~state~~ State must expend and account for the Federal award in accordance with ~~state~~ State laws and procedures for expending and accounting for the ~~state's own~~ State's funds. ~~In~~  
~~addition, the state's~~ All recipient and ~~the other non-Federal entity's~~ subrecipient financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by ~~general and program specific~~ the terms and conditions; and ~~the~~  
~~tracing of funds to a level of~~ tracking expenditures ~~adequate~~ to establish that ~~such~~ funds have been used ~~according to their~~ accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See ~~also~~ § 200.450.

## Unofficial Comparison Version

(b) The recipient's or subrecipient's financial management system ~~of each non-Federal entity~~ must provide for the following (see ~~also~~ §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification, ~~in its accounts,~~ of all Federal awards ~~received and expended and the Federal programs under which they were received.~~ ~~Federal program and Federal award identification must include, as applicable,~~ by the Assistance Listings title and number, Federal award identification number ~~and,~~ Federal award year, and name of the Federal agency, ~~and name of the~~ or pass-through entity, ~~if any.~~

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

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

## Unofficial Comparison Version

(4) Effective control over, and accountability for, all funds, property, and ~~other~~ assets.

The ~~non-Federal entity~~ recipient or subrecipient must ~~adequately~~ safeguard all assets and ~~assure~~ ~~that~~ ensure they are used solely for authorized purposes. See § 200.303.

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

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

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

### § 200.303 Internal controls.

The ~~non-Federal entity~~ recipient or subrecipient must:

(a) Establish, ~~document~~, and maintain effective internal control over the Federal award that provides reasonable assurance that the ~~non-Federal entity~~ recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should ~~be in compliance~~ comply with the guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control--Integrated Framework<sup>22</sup>,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

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

(c) Evaluate and monitor the ~~non-Federal entity's~~ recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified ~~including noncompliance identified in audit findings~~.

## Unofficial Comparison Version

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

### § 200.304 Bonds.

~~The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:~~

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal ~~awarding~~ agency, ~~at its discretion~~, may require adequate bonding and insurance if the bonding and insurance requirements of the ~~non-Federal entity~~ recipient are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal ~~awarding~~ agency may require adequate fidelity bond coverage where the ~~non-Federal~~ recipient entity lacks ~~sufficient~~ coverage to protect the ~~Federal Government's~~ interest: of the Federal Government.

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

### § 200.305 Federal payment.



## Unofficial Comparison Version

(a) ~~For~~ *Payments for States*. Payments for states, ~~payments~~ are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A—2000, “Overall Disbursing Rules for All Federal Agencies<sup>22</sup>.”

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

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

## Unofficial Comparison Version

and the proportionate share of any allowable indirect costs. The ~~non-Federal entity~~ recipient or subrecipient must make timely ~~payment~~ payments to contractors in accordance with the contract provisions.

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

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

(ii) ~~Non-Federal entities~~ Recipients and subrecipients must be authorized to submit ~~requests for advance payments and reimbursements~~ payment requests as often as necessary when electronic fund transfers are used or 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.~~ See 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 or pass-through entity sets a specific condition per § 200.208, ~~or when the non-Federal entity requests payment by reimbursement. This method may be used on any~~ requested by the recipient or subrecipient, when a Federal award is for construction, or ~~if the major~~ when a significant portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal

## Unofficial Comparison Version

~~awarding~~ agency or pass-through entity must make payment within 30 calendar days after receipt of the ~~billing, payment request~~ unless the Federal ~~awarding~~ agency or pass-through entity reasonably believes the request to be improper.

(4) If the ~~non-Federal entity~~ recipient or subrecipient 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~~ recipient or subrecipient 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~~ recipient or subrecipient to cover its estimated disbursement needs for an initial period generally ~~geared~~ aligned to the ~~non-Federal entity's~~ recipient's or subrecipient's disbursing cycle. ~~Thereafter~~ After that, the Federal ~~awarding~~ agency or pass-through entity must reimburse the ~~non-Federal entity~~ recipient or subrecipient for its actual cash disbursements. Use of the working capital advance ~~method of~~ payment ~~method~~ requires that the pass-through entity provide timely advance payments to any subrecipients ~~in order~~ to meet the ~~subrecipient's~~ subrecipient's actual cash disbursements. The ~~working capital advance method of payment must not be used by the~~ pass-through entity ~~must not use the working capital advance method of payment~~ if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the ~~subrecipient's~~ subrecipient's actual cash disbursements.

(5) ~~To the extent~~ If available, the ~~non-Federal entity~~ recipient or subrecipient must disburse funds available from program income (including repayments to a revolving fund),

## Unofficial Comparison Version

rebates, refunds, contract settlements, audit recoveries, and interest earned on ~~such~~ Federal funds before requesting additional cash payments.

(6) ~~Unless otherwise required by Federal statutes, payments~~ 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, including § 200.339, or required by Federal statute, regulations, or in one or more~~ of the following ~~applies~~ instances:

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

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

(~~iii~~7) A payment withheld for failure to comply with ~~Federal award~~ the terms and conditions, ~~but without suspension~~ of the Federal award, must be released to the ~~non-Federal entity~~ recipient or subrecipient upon subsequent compliance. When a Federal award is suspended, payment adjustments ~~will~~ must be made in accordance with § 200.343.

(~~iv~~8) A payment must not be made to a ~~non-Federal entity~~ recipient or subrecipient for amounts that ~~are withheld by the non-Federal entity~~ the recipient or subrecipient withholds from ~~payment to~~ contractors to assure satisfactory completion of work. ~~A payment~~ Payment must be made when the ~~non-Federal entity~~ actually recipient or subrecipient disburses the withheld funds

## Unofficial Comparison Version

to the contractors or to escrow accounts established to ~~assure~~ensure 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:~~

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

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

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

~~(i) The non-Federal entity recipient or subrecipient receives less than \$250,000 in Federal awards funding per year;~~

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

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

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

## Unofficial Comparison Version

~~(9) Interest earned amounts~~(v) An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

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

~~(i) For~~ All interest in excess of \$500 per year must be returned to PMS regardless of whether the recipient or subrecipient was paid through PMS. Instructions for returning interest ~~can~~ can be found at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

(13) All other Federal awards ~~paid through PMS, the refund should:~~

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

~~(B) List funds must be returned to the PMS Payee Account Number(s) (PANs);~~

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

~~(D) Make~~agency. Returns should follow the instructions provided by the Federal agency.

All returns ~~payable to: Department of Health and Human Services.~~

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

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

~~(B) Include the name of the awarding agency;~~

## Unofficial Comparison Version

~~(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 instructions provided at <https://pms.psc.gov/grant-recipients/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~~

## Unofficial Comparison Version

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

~~1 Please note that the 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<sup>2</sup> 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~~

~~2 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.html.~~

**§ 200.306 Cost sharing ~~or matching~~.**



## Unofficial Comparison Version

(a) ~~Under Federal research proposals, voluntary committed cost~~ Cost sharing ~~is~~ may not ~~expected. It cannot~~ be used as a factor during the merit review of applications or proposals, ~~but~~ may be considered if it is ~~both in accordance with Federal awarding agency~~ unless allowed by the Federal agency's regulations, and ~~specified in the~~ information is included in the notice of funding opportunity. ~~Criteria for considering voluntary~~ Voluntarily committed cost sharing ~~and any other program policy factors that may be used to determine who may receive~~ is not expected under Federal award ~~must be explicitly described in the notice of funding opportunity~~ research grants. See also §§ 200.414 ~~and~~, 200.204, and ~~appendix~~ Appendix I ~~to this part.~~

(b) ~~For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party~~ The Federal agency or pass-through entity must accept any cost sharing or in-kind contributions, ~~must be accepted~~ as part of the ~~non-Federal entity's cost sharing~~ recipient's or ~~matching when such~~ subrecipient's contributions ~~meet all of the following criteria~~ to a program when they:

- (1) Are verifiable ~~from~~ the ~~non-Federal entity's~~ recipient's or subrecipient's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for ~~accomplishment of project or program~~ achieving the objectives; ~~of the Federal award;~~
- (4) Are allowable under subpart E ~~of this part;~~
- (5) Are not paid by the Federal Government under another Federal award, except where the program's Federal ~~statute~~ authorizing a program ~~statute~~ specifically provides that Federal

## Unofficial Comparison Version

funds made available for ~~such~~the program can be applied to ~~matching or~~ cost sharing requirements of other Federal programs~~;~~;

(6) Are provided for in the approved budget when required by the Federal ~~awarding~~ agency; and

(7) Conform to other ~~applicable~~ provisions of this part~~, as applicable.~~.

(c) Unrecovered indirect costs, including indirect costs on cost sharing ~~or matching~~, may be included as part of cost sharing ~~or matching only~~ with the prior approval of the Federal ~~awarding~~ agency ~~or pass-through entity~~. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the ~~non-Federal entity's~~ recipient's or subrecipient's approved ~~negotiated~~ indirect cost rate.

(d) Values for ~~non-Federal entity~~ recipient or subrecipient contributions of services and property must be established in accordance with the cost principles in subpart E ~~of this part. If~~. When a Federal ~~awarding~~ agency ~~or pass-through entity~~ authorizes the ~~non-Federal entity~~ recipient or subrecipient to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing ~~or matching~~ must be the lesser of paragraph (d)(1) or (2) ~~of this section~~ below.

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

(2) The current fair market value. However, when there is sufficient justification, the Federal ~~awarding~~ agency ~~or pass-through~~ may approve ~~the use of~~ using the current fair market

## Unofficial Comparison Version

value of the donated property, even if it exceeds the value described in paragraph (d)(1) ~~of this section~~ at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other ~~skilled and unskilled~~ labor may be counted as cost sharing ~~or matching~~ if the service is ~~an integral and necessary part of an approved project or for~~ the program. Rates for third-party volunteer services must be consistent with those paid for similar work by the ~~non-Federal entity. In those instances in which~~ recipient or subrecipient. When the required skills are not found in the ~~non-Federal entity~~ recipient's or subrecipient's workforce, rates must be consistent with those paid for similar work in the labor market ~~in which~~ where the ~~non-Federal entity~~ recipient or subrecipient competes for the ~~kind of~~ services involved. In either case, ~~paid~~ fringe benefits that are ~~reasonable, necessary~~ allowable, allocable, and ~~otherwise allowable~~ reasonable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the ~~employee's~~ employee's regular rate of pay plus an amount of fringe benefits that ~~is reasonable, necessary, are allowable, allocable, and otherwise allowable, and~~ reasonable. These services may also include indirect costs at either the third-party ~~organization's~~ ~~approved~~ organization's federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) ~~provided these~~. These services are allowable if they employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

Unofficial Comparison Version

(g) Donated property from third parties may include ~~such~~ items ~~such~~ as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. ~~Value~~The assessed ~~to~~value of donated property included ~~in the~~as cost sharing ~~or matching share~~ must not exceed the property's fair market value ~~of the property~~ at the time of the donation.

(h) The method used for determining ~~cost sharing or matching for third party~~ the value of donated equipment, buildings, and land for which title passes to the ~~non-Federal entity~~recipient or subrecipient may differ according to the ~~purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies~~ following:

(1) If the purpose of the Federal award is to assist the ~~non-Federal entity~~recipient or subrecipient in ~~the acquisition of~~acquiring equipment, buildings, or land, the aggregate value of the donated property may be claimed as cost sharing ~~or matching~~.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings, or land, ~~normally~~ only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, ~~if provided that~~in the terms and conditions of the Federal ~~awarding agency has approved the charges~~award. See ~~also~~ § 200.420.

(i) The value of donated property must be determined in accordance with the ~~usual~~ accounting policies of the ~~non-Federal entity~~,recipient or subrecipient with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the ~~non-Federal entity~~recipient or subrecipient as established by an independent appraiser (~~e.g., for example~~, certified real property appraiser or General Services

## Unofficial Comparison Version

Administration representative) and certified by a responsible official of the ~~non-Federal entity recipient or subrecipient~~ as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 ~~U.S.C.~~ USC 4601—4655) ~~(Uniform Act)~~ except as provided in the implementing regulations at 49 CFR part 24, “Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs<sup>22</sup>.”

(2) The value of donated equipment must not exceed the fair market value ~~of equipment of the same age and condition~~ at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) ~~For~~ ~~The fair market value of~~ third-party in-kind contributions, ~~the fair market value of goods and services~~ must be documented and, to the extent feasible, supported by the same methods used internally by the ~~non-Federal entity recipient or subrecipient~~.

(k) For ~~IHEs, see also~~ institutions of higher education (IHE), voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing and should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing effort, is faculty-donated additional time above that agreed to as part of the award. See OMB memorandum M--01--06, dated January 5, 2001, Clarification of OMB A--21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

### § 200.307 Program income.

## Unofficial Comparison Version

(a) *General.* ~~Non-Federal entities are encouraged to earn income to defray program costs where appropriate.~~ The recipient or subrecipient is encouraged to earn income to defray program costs when appropriate. Program income must be used for the original purpose of the Federal award. Program income earned during the period of performance may only be used for costs incurred during the period of performance or allowable closeout costs. Program income must be expended prior to requesting additional Federal funds. Program income exceeding amounts specified in the Federal award may be added to or deducted from the total allowable costs in accordance with the terms and conditions of the Federal award.

(b) *Use of program income.* There are three methods of applying program income: (1) deduction; (2) addition; and (3) cost-sharing. The Federal agency should specify how program income will be used in the terms and conditions of the Federal award. The deduction method will be used if the Federal agency does not specify a method for applying program income. However, the addition method will be used when no method is specified for awards made to institutions of higher education (IHE) and nonprofit research institutions. In specifying alternatives to the deduction and addition methods, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients as well as between the sources, kinds, or amounts of income.

(1) Deduction. Program income is deducted from the total allowable costs, reducing the overall total amount of the Federal award.

(2) Addition. ~~(b)~~ Program income is added to the total allowable costs, increasing the overall total amount of the Federal award. If no program income method is specified in the Federal award, prior approval is required to use the addition method.

## Unofficial Comparison Version

(3) *Cost sharing.* Program income is used to meet the Federal award's cost sharing requirement. If no program income method is specified in the Federal award, prior approval is required to use the cost sharing method.

(c) *Income after the period of performance.* There are no requirements governing the disposition of program income earned after the end of the period of performance of the Federal award unless stipulated in the Federal agency regulations or the terms and conditions of the Federal award. The Federal agency may negotiate agreements with recipients regarding appropriate uses of income earned after the end of the period of performance as part of the closeout process. See § 200.344.

(d) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to ~~the generation of~~generating program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

~~(e)~~(e) The following are not considered program income unless specified in Federal statutes, regulations, or the terms and conditions of the Federal award:

(1) *Governmental revenues.* Taxes, special assessments, levies, fines, and ~~other~~ ~~such~~similar revenues the recipient or subrecipient raised ~~by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.~~.

(d2) *Property.* Proceeds from the sale of real property, equipment, or supplies ~~are not~~ ~~program income; such~~. The proceeds ~~will~~must be handled in accordance with the requirements

## Unofficial Comparison Version

of the Property Standards of §§ 200.311, 200.313, ~~and 200.314~~, or as ~~specifically~~ explicitly identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

~~(e) Use of program income. If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.~~ (3) *License fees and royalties.* License

~~(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.~~

~~(2) *Addition.* With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.~~



## Unofficial Comparison Version

~~(3) Cost sharing or matching. With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.~~

~~(f) Income after the period of performance. There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.~~

~~(g) License fees and royalties. 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 the Federal award subject to which 37 CFR part 401 is applicable.~~

### **§ 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~~ share, non-Federal share ~~(see definition for Federal share in § 200.1), or only the Federal share,~~ both depending upon Federal ~~awarding~~ agency requirements. ~~The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.~~

## Unofficial Comparison Version

(b) ~~Recipients are required to~~The recipient or subrecipient must report deviations from the approved budget ~~or~~, project or program scope, or objective, ~~and~~(s) in accordance with § 200.329. The recipient or subrecipient must request prior approvals from the Federal ~~awarding agencies~~agency or pass-through entity for budget and program plan revisions, in accordance with this section.

(c) ~~For non-construction~~When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application. However, the Federal ~~awards, recipients must~~agency or pass-through entity may inform the recipient or subrecipient that a letter of request ~~prior approvals from~~is sufficient.

(d) The Federal ~~awarding agencies~~agency or pass-through entity must review the request for budget or program plan revision and notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request. The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

(e) Unless specified in this guidance, the Federal agency may not impose other prior approval requirements for specific items not approved by OMB. See also §§ 200.102 and 200.407.

(f) *Revisions Requiring Prior Approval.* A recipient or subrecipient must request prior written approval from the Federal agency or pass-through entity for the following ~~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).

## Unofficial Comparison Version

(2) Change in ~~a key person~~ personnel specified in the ~~application~~ recipient's or subrecipient's application and included in the Federal award.

(3) The disengagement from ~~the~~ project for more than three months, or a 25 percent reduction in time and effort devoted to the ~~project~~ Federal award over the course of the period of performance, by the approved project director or principal investigator.

~~(4) The inclusion, unless waived by the Federal awarding agency, of~~ (4) Incurring costs that require prior approval in accordance with subpart E ~~of this part as applicable~~. The Federal agency may waive prior approval of these costs when the costs requiring prior approval are included in the recipient's or subrecipient's application, and also included in the Federal award.

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

(6) ~~Unless described~~ Subaward activities not proposed in the application and ~~funded in the~~ approved ~~Federal awards~~, in the Federal award. A change in subrecipient only requires prior approval if the ~~subawarding, transferring~~ Federal agency or ~~contracting out~~ pass-through entity includes the requirement in the terms and conditions of ~~any work under~~ the Federal award. In general, a Federal ~~award, including fixed amount subawards as described in § 200.333~~ agency or pass-through entity should not require prior approval of a change to the subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This ~~provision~~ requirement does not apply to ~~the acquisition of supplies, material, acquiring equipment, supplies, or general support services.~~

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

## Unofficial Comparison Version

(8) ~~The need arises for~~ Requesting additional Federal funds to complete the project. If approved, the Federal agency must ensure that adequate funds are available to avoid a violation of the Antideficiency Act.

~~(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)(9) Transferring funds between the construction and nonconstruction work under a Federal award.~~

(10) A no-cost extension (meaning, an extension of time that requires no additional Federal funds) of the period of performance, other than any one-time extension authorized by the Federal agency in accordance with paragraph (g)(2). All requests for no-cost extensions should be submitted at least 10 calendar days before the conclusion of the period of performance. The Federal agency may approve multiple no-cost extensions under a Federal award if not prohibited by Federal statute or regulation.

(g) Except for the requirements listed in paragraphs (ef)(1) through ~~(8) of this section,~~10), 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 ~~of this part.~~ Such waivers may include authorizing recipients to do ~~any~~ one or more of the following:

(1) *Pre-award costs.* Incur project costs 90 calendar days before the Federal ~~awarding agency makes the Federal~~ award date. Expenses ~~incurred~~ more than 90 calendar days ~~pre-before~~ the Federal award ~~requiredate requires~~ prior approval of the Federal ~~awarding~~ agency. All costs incurred before the Federal ~~awarding agency makes the Federal~~ award date are at the ~~recipient's~~ recipient's own risk (i.e., for example, the Federal ~~awarding~~ agency is not required to

## Unofficial Comparison Version

reimburse such costs if ~~for any reason~~ the recipient does not receive ~~at the~~ Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). ~~See also § 200.458.~~ Pre-award costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency. See also § 200.458.

(2) *One-time extensions.* Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (eg)(2)(i) through (iii) of this section apply. ~~For one-time extensions~~ Prior approval is not required if a recipient is authorized in the terms and conditions of the Federal award to initiate a one-time extension. ~~However,~~ the recipient must notify the Federal ~~awarding~~ agency in writing with the supporting ~~reasons~~ justification and a revised period of performance at least 10 calendar days before the ~~end~~ conclusion of the period of performance ~~specified in the Federal award. This.~~ A one-time extension ~~must~~ may not be exercised ~~merely~~ for the sole purpose of using unobligated balances. ~~Extensions require explicit prior~~ This paragraph does not preclude the Federal ~~awarding~~ agency ~~approval~~ from approving further no-cost extensions to the Federal award. One-time extensions require prior approval from the Federal agency when:

- (i) The terms and conditions of the Federal award prohibit the extension.
- (ii) The extension requires additional Federal funds.
- (iii) The extension involves any change in the approved ~~objectives or~~ scope of the project.

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

## Unofficial Comparison Version

~~(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-~~ *(h) Prior approvals for research awards.* The prior approval requirements described in ~~this~~ paragraph ~~(eg)~~ are automatically waived ~~(i.e., recipients need not obtain such prior approvals)~~ ~~unless one of the conditions included~~ for Federal awards that support research unless stipulated in the Federal agency's regulations or terms and conditions of the Federal award. However, one-time extensions require the Federal agency's prior approval when one of the conditions in paragraph ~~(eg)~~(2) of this section 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-~~ *(i) Awards above the Simplified Acquisition Threshold.* The Federal agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation. The Federal agency may restrict the transfer of funds among direct cost categories (for example, personnel, travel, and supplies) or programs, functions, and activities when:

~~(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:~~

## Unofficial Comparison Version

~~(1) The revision results from changes in the scope or the objective~~(1) The Federal share of the Federal award exceeds the simplified acquisition threshold; and

~~(2) The cumulative amount of a transfer exceeds 10 percent of the 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~~total budget, including cost principles listed in subpart E.

~~(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been~~share, as last 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~~the Federal agency.

### **§ 200.309 Modifications to Period of Performance.**

## Unofficial Comparison Version

~~If a~~When the Federal ~~awarding~~ agency or pass-through entity ~~approves an extension, or if a recipient extends under § 200.308(e)(2), the Period~~Federal award, the period of ~~Performance~~performance will be amended to end at the completion of the extension. ~~If a~~When the Federal agency decides not to continue a Federal award with multiple budget periods, the period of performance will be amended to end at the completion of the authorized budget period. If termination occurs, the ~~Period~~period of ~~Performance~~performance will be amended to end upon the effective date of termination. ~~If a~~A renewal award means an award made after the expiration of a Federal award for which the start date is ~~issued, a~~contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct ~~Period~~period of ~~Performance~~performance.

### Property Standards

#### § 200.310 Insurance coverage.

The ~~non-Federal entity~~recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property ~~and equipment~~ owned by the ~~non-Federal entity~~recipient or subrecipient. Insurance is not required for Federally-owned property ~~need not be insured~~ unless required by the terms and conditions of the Federal award.

#### § 200.311 Real property.

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



## Unofficial Comparison Version

(b) *Use.* Except as otherwise provided by Federal statutes or ~~by the Federal~~ ~~awarding~~ agency, real property ~~will~~~~must~~ be used for the originally--authorized purpose as long as it is needed for that purpose,~~during which time.~~ While the ~~non-Federal entity~~ property is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests-- except as provided by the Federal agency. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(c) *Appraisals.* Appraisals of real property must be as conducted by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs."

(d) *Disposition.* When real property is no longer needed for the originally--authorized purpose, the ~~non-Federal entity~~ recipient or subrecipient must obtain disposition instructions from the Federal ~~awarding~~ agency or pass-through entity. The instructions must ~~provide for~~ specify one of the following ~~alternatives:~~ disposition methods:

(1) *Retain title after compensating the Federal* ~~awarding~~ ~~agency.~~ ~~The amount paid~~ When the recipient or subrecipient retains title to the property, it must pay the Federal ~~awarding~~ agency ~~will be computed~~ an amount calculated by ~~applying~~ multiplying the ~~Federal~~ ~~awarding~~ ~~agency's~~

## Unofficial Comparison Version

percentage of ~~participation in the cost of~~ Federal agency's contribution towards the original purchase (and costs of any improvements) ~~to~~ by the current fair market value of the property. However, in ~~those~~ situations where the ~~non-Federal entity~~ recipient or subrecipient is disposing of real property acquired or improved with ~~a~~ the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sell the property and compensate the Federal ~~awarding~~ agency. ~~The amount due~~*  
~~to~~ When a recipient or subrecipient sells the property, it must pay the Federal ~~awarding~~ agency ~~will be an amount~~ calculated by ~~applying~~ multiplying the ~~Federal awarding agency's~~ percentage of ~~participation in the cost of~~ the Federal agency's contribution towards the original purchase (and cost of any improvements) ~~to~~ by the proceeds of the sale after ~~deduction of~~ deducting any actual and reasonable ~~selling and fixing up~~ expenses. ~~If paid to sell or fix up the property for sale.~~  
When the Federal award has not been closed out, the net proceeds from ~~the~~ sale may be offset against the original cost of the property. When ~~the non-Federal entity is~~ directed to sell ~~property,~~ ~~sale~~ the property, the recipient or subrecipient must sell the property utilizing procedures ~~must be followed~~ that provide for competition to the extent practicable and ~~result~~ that results in the highest possible return.

(3) *Transfer title to the Federal ~~awarding~~ agency or ~~to~~ a third party designated/approved by the Federal ~~awarding~~ agency. ~~The non-~~When a recipient or subrecipient transfers title to the property to a Federal agency or third party designated or approved by the Federal ~~entity~~ agency, the recipient or subrecipient is entitled to be paid an amount calculated by ~~applying~~ multiplying the ~~non-Federal entity's~~ percentage of ~~participation in the~~ the recipient's or subrecipient's*

contribution towards the original purchase of the real property (and cost of any improvements) ~~to~~by the current fair market value of the property.

**§ 200.312 Federally-owned and exempt property.**

(a) Title to ~~federally~~Federally-owned property remains vested in the Federal Government. The ~~non-Federal entity~~recipient or subrecipient must submit ~~annually~~an inventory listing of ~~federally~~Federally-owned property in its custody to the Federal ~~awarding~~agency. ~~Upon~~ or pass-through entity on an annual basis. The recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity upon completion of the Federal award or when the property is no longer needed, ~~the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.~~

(b) If the Federal ~~awarding~~ agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal ~~awarding~~ agency has statutory authority to dispose of the property by alternative methods (~~e.g. for example~~, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710-(i)) ~~to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."~~)). The Federal ~~awarding~~ agency or pass-through entity must issue appropriate instructions to the ~~non-Federal entity~~recipient or subrecipient.

(c) Exempt property means property acquired under ~~the~~ Federal award where the Federal ~~awarding~~ agency has chosen to vest title to the property to the ~~non-Federal entity~~recipient or subrecipient without further responsibility to the Federal Government, ~~based upon the explicit terms and conditions of the Federal award.~~. The Federal ~~awarding~~ agency may

only exercise this option when ~~statutory authority exists~~, permitted by Federal statute and set forth in the terms and conditions of the Federal award. Absent statutory authority and specific terms and conditions of the Federal award, ~~the~~ title to exempt property acquired under the Federal award remains with the Federal Government.

### § 200.313 Equipment.

See also § 200.439.

(a) *Title.* ~~Subject to the requirements and conditions set forth in this section, title~~ Title to equipment acquired under ~~at~~ the Federal award will vest upon acquisition in the ~~non-~~recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal ~~entity~~. ~~Unless a~~ statute specifically authorizes the Federal agency to vest title in the ~~non-~~Federal ~~entity~~ recipient or subrecipient without further responsibility to the Federal Government; (and the Federal agency elects to do so, ~~the title must be a~~). A conditional title. ~~Title must vest~~ means a clear title is withheld by the Federal agency until conditions and requirements specified in the ~~non-~~terms and conditions of a Federal ~~entity~~ award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance; or until the property is no longer needed for the purposes of the project.

(2) ~~Not~~ While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber ~~the property~~ its title or other interests without the approval of the Federal ~~awarding~~ agency or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not

## Unofficial Comparison Version

the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General.* A ~~state~~State must use, manage and dispose of equipment acquired under a Federal award ~~by the state~~ in accordance with ~~state~~State laws and procedures. ~~Other non-Indian Tribes~~ must use, manage, and dispose of equipment acquired under a Federal ~~entities~~award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients must follow paragraphs (c) through (e) of this section.

(c) *Use.*

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

(i) Activities under ~~a~~other Federal ~~award~~awards from the Federal ~~awarding~~agency ~~which~~that funded the original ~~program or project~~; then

## Unofficial Comparison Version

(ii) Activities under Federal awards from other Federal ~~awarding~~ agencies. ~~This includes~~ ~~These activities include~~ consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the ~~non-Federal entity~~ recipient or subrecipient must also make the equipment available for use on other ~~projects or~~ programs ~~currently or previously~~ projects supported by the Federal Government, provided that such use will not interfere with the ~~work on the projects or~~ ~~program~~ purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal ~~awarding~~ agency that financed the equipment ~~and second~~. Second preference must be given to programs or projects under Federal awards from other Federal ~~awarding~~ agencies. Use for non-federally-funded ~~programs or~~ projects is also permissible. ~~User fees should be considered if, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.~~

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the ~~non-Federal entity~~ recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private ~~companies~~ company would charge for ~~equivalent~~ similar services ~~unless specifically authorized by Federal statute for~~. This restriction is ~~effective~~ as long as the Federal Government retains an interest in the equipment: ~~or as authorized by Federal statute.~~

(4) When acquiring replacement equipment, the ~~non-Federal entity~~ recipient or subrecipient may ~~use the equipment to be replaced as a~~ trade-in or sell the ~~property~~ equipment and use the proceeds to offset the cost of the replacement ~~property~~ equipment.

## Unofficial Comparison Version

(d) *Management requirements.* ~~Procedures for managing equipment (including replacement equipment).~~ Regardless of whether equipment is acquired in ~~whole or in part~~ or its entirety under ~~at the~~ Federal award, ~~until disposition takes place will, as a minimum,~~ the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

(1) Property records must ~~be maintained that~~ include a description of the property, a serial number or ~~other another~~ identification number, the source of funding for the property (including the FAIN), ~~who holds the~~ title holder, the acquisition date, ~~and the~~ cost of the property, ~~the percentage of Federal participation in the project costs for the Federal award under which the property was acquired~~ the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any ~~ultimate~~ disposition data including the date of disposal and sale price of the property. ~~The recipient is responsible for maintaining and updating property records when there is a change in the status of the property.~~

(2) A physical inventory of the property must be ~~taken~~ conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be ~~developed in place~~ to ensure ~~adequate~~ safeguards ~~to prevent for preventing property~~ loss, damage, or theft ~~of the property.~~. Any loss, damage, or theft of equipment must be investigated ~~and reported to the Federal agency or pass-through entity.~~

(4) ~~Adequate~~ Regular maintenance procedures must be ~~developed to keep the property in good~~ place to ensure the property is in proper working condition.

## Unofficial Comparison Version

(5) If the ~~non-Federal entity~~ recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be ~~established~~ in place to ensure the highest possible return.

(e) *Disposition.* When ~~original or replacement~~ equipment acquired under a Federal award is no longer needed for the original project ~~or~~, program, or for other activities currently or previously supported by a Federal ~~awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity~~ agency, the recipient or subrecipient must request disposition instructions from the Federal ~~awarding agency or pass-through entity~~ if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal ~~awarding agency or pass-through entity~~ disposition instructions:

(1) ~~Items of equipment~~ Equipment with a current ~~per-unit~~ fair market value of \$510,000 or less (~~per unit~~) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal ~~awarding agency or pass-through entity~~.

(2) Except as provided in § 200.312(b), or if the Federal ~~awarding agency or pass-through entity~~ fails to provide requested disposition instructions within 120 days, items of equipment with a current ~~per-unit~~ fair market value in excess of \$510,000 (~~per-unit~~) may be retained or sold by the ~~non-recipient or subrecipient. However, the Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale by the Federal awarding agency's percentage of participation in the cost of the original purchase.~~ If the equipment is sold, the Federal ~~awarding agency or pass-through entity~~ may permit the ~~non-~~



## Unofficial Comparison Version

~~Federal entity~~ recipient or subrecipient to deduct and retain from the Federal share \$500 or ~~ten~~\$1,000 or 10 percent ~~of the proceeds, (whichever is less, for its-)~~ from the Federal share of the proceeds to cover expenses associated with the selling and handling ~~expenses~~ of the equipment.

(3) The ~~non-Federal entity~~ recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that, ~~in such cases,~~ the ~~non-Federal entity~~ recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a ~~non-Federal entity~~ recipient or subrecipient fails to take appropriate disposition actions, the Federal ~~awarding~~ agency or pass-through entity may direct the ~~non-Federal entity~~ recipient or subrecipient to take disposition actions.

(f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

### § 200.314 Supplies.

See also § 200.453.

(a) Title to supplies ~~will vest in~~ acquired under the ~~non-Federal entity~~ award will vest upon acquisition ~~-if in the recipient or subrecipient.~~ When there is a residual inventory of unused supplies exceeding \$510,000 in ~~total~~ aggregate value ~~upon termination or completion~~ at the end of the ~~project or program~~ period of performance, and the supplies are not needed for any other Federal award, the ~~non-Federal entity~~ recipient or subrecipient may retain ~~the supplies for use on other activities~~ or sell them, but must, in either case, compensate the Federal Government

## Unofficial Comparison Version

~~for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.~~

~~(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use~~unused supplies. Unused supplies means ~~supplies acquired under~~that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. The Federal agency or pass-through entity is entitled to compensation in an amount calculated by multiplying the percentage of the Federal agency's or pass-through-through entity's contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. If the supplies are sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain \$500 or 10 percent (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the supplies.

~~(b) Unless expressly authorized by Federal statute, the recipient or subrecipient must not use supplies acquired with the Federal award to provide services to other organizations for a fee that is less than a private companiescompany would charge for equivalentssimilar services, unless specifically. This restriction is effective as long as the Federal Government retains an interest in the supplies or as authorized by Federal statute.~~

### **§ 200.315 Intangible property.**

~~(a) Title to intangible property (see definition for Intangible property in § 200.1) acquired under a Federal award vestsvest upon acquisition in the non-Federal entityrecipient or subrecipient. The non-Federal entityrecipient or subrecipient must use that intangible property for the originally-authorized purpose, and must not encumber the property without the approval~~

## Unofficial Comparison Version

of the Federal ~~awarding~~ agency, or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted. When no longer needed for the originally--authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) ~~The non-Federal entity may~~ To the extent permitted by law, the recipient or subrecipient is not prohibited from asserting any copyright it may own in any work ~~that is subject to copyright and was developed, or for which ownership was resulting from or acquired,~~ under ~~the~~ Federal award. ~~The~~ To the extent permitted by law, the Federal ~~awarding~~ agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. ~~This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.~~

(c) The ~~non-Federal entity~~ recipient or subrecipient is subject to applicable regulations governing patents and inventions, including ~~governmentwide~~ government-wide regulations ~~issued by the Department of Commerce at~~ in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;  
and

## Unofficial Comparison Version

(2) Authorize others to receive, reproduce, publish, or otherwise use ~~such~~the data for Federal purposes.

(e)

(1) ~~In response to a Freedom of Information Act (FOIA) request for~~The recipient or subrecipient must provide research data relating to published research findings produced under ~~the~~ Federal award and that were used by the Federal Government in developing an agency action that has the force and effect of law; ~~if requested by the Federal awarding agency must in response to a Freedom of Information Act (FOIA) request, and the non-Federal entity must provide, within a reasonable time.~~ When the ~~research data so that they can be made available to the public through the procedures established under the FOIA.~~ If the Federal ~~awarding~~Federal agency obtains the research data solely in response to a FOIA request, the Federal ~~awarding~~ agency may charge the requester a ~~reasonable~~fee ~~equaling~~for the ~~full incremental~~cost of obtaining the research data. This fee should reflect ~~the~~ costs incurred by the Federal agency and the ~~non-Federal entity-recipient or subrecipient~~. This fee is in addition to any fees the Federal ~~awarding~~ agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings ~~means when~~mean:

(i) Research findings ~~are~~published in a peer-reviewed scientific or technical journal; or

(ii) ~~A~~Research findings publicly cited by a Federal agency ~~publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government~~in developing an agency action that has the force and effect of law<sup>22</sup> ~~is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.~~

## Unofficial Comparison Version

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, ~~but~~. Research data does not include any of the following:

(i) Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., for example, laboratory samples). ~~Research data also do not include:~~

(ii) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(iii) Personnel ~~and~~, medical, and other personally identifiable information ~~and similar information the disclosure of which~~ that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, ~~such as information~~. Information that could be used to identify a particular person in a research study is not considered research data.

### § 200.316 Property trust relationship.

Real property, equipment, and intangible property, ~~that are~~ acquired or improved with ~~the~~ Federal award must be held in trust by the ~~non-Federal entity~~ recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal ~~awarding~~ agency or pass-through entity may require the ~~non-Federal entity~~ recipient or subrecipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

### Procurement Standards

#### § 200.317 Procurements by ~~states~~ States and Indian Tribes.

## Unofficial Comparison Version

When ~~procuring property and services~~ conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements ~~from its~~ with non-Federal funds. ~~The~~ If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State ~~will~~ or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, ~~and 200.323~~ ~~and ensure that every purchase order or other contract includes any clauses required by § 200.327~~-, and 200.327. All other ~~non-Federal entities~~ recipients and subrecipients, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

### § 200.318 General procurement standards.

(a) The ~~non-Federal entity~~ recipient or subrecipient must ~~have~~ maintain and use documented ~~procedures for procurement procedures~~, transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement ~~procedures must be~~ consistent with State, local, and tribal laws and regulations and the standards ~~of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards~~ identified in §§ 200.317 through 200.327.

(b) ~~Non-Federal entities~~ Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) *Conflicts of interest.*

## Unofficial Comparison Version

(1) The ~~non-Federal entity~~ recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, ~~or agent, or board member with a real or apparent conflict of interest~~ may participate in the selection, award, or administration of a contract supported by ~~a~~ the Federal award ~~if he or she has a real or apparent conflict of interest. Such a~~. A conflict of interest ~~would arise~~ includes when the employee, officer, or agent, any member of ~~his or her~~ their immediate family, ~~his or her~~ their partner, or an organization ~~which~~ that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from ~~a firm~~ an entity considered for a contract. ~~The officers, employees,~~ An employee, officer, and ~~agent~~ agent of the ~~non-Federal entity~~ recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors ~~or parties to subcontracts.~~. However, ~~non-Federal entities~~ the recipient or subrecipient may set standards for situations ~~in which~~ where the financial interest is not substantial or ~~the~~ a gift is an unsolicited item of nominal value. ~~The~~ The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations ~~of such standards by officers,~~ its employees, ~~or officers,~~ agents ~~of the non-Federal entity,~~ or board members.

(2) If the ~~non-Federal entity~~ recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, ~~local government,~~ or Indian ~~tribe~~ Tribe, the ~~non-Federal entity~~ recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest ~~means~~ mean that because of relationships with a parent company, affiliate, or subsidiary organization, the ~~non-Federal~~

## Unofficial Comparison Version

~~entity~~recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The ~~non-Federal entity's~~recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. ~~Where~~When appropriate, an analysis ~~will~~should be made ~~of lease versus purchase alternatives, between leasing and any other appropriate analysis~~purchasing property or equipment to determine the most economical approach.

(e) ~~To foster greater economy and efficiency,~~When appropriate for the procurement or use of common or shared goods and services, recipients and ~~in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is~~subrecipients are encouraged to enter into ~~state~~State and local intergovernmental agreements or inter-entity agreements ~~where appropriate~~for procurement transactions. These or ~~use of common or shared goods~~similar procurement arrangements using strategic sourcing may foster greater economy and ~~services. Competition requirements will be met with documented~~efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements-) will meet the competition requirements of this part.

(f) The ~~non-Federal entity~~recipient or subrecipient is encouraged to use ~~Federal~~excess and surplus ~~Federal~~ property ~~in lieu~~instead of purchasing new equipment and property ~~whenever such use~~when it is feasible and reduces project costs.



Unofficial Comparison Version

~~(g) The non-Federal entity~~(g) When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering ~~is a systematic and creative analysis of means analyzing~~ each contract item or task to ensure ~~that~~ its essential function is provided at the overall ~~lower~~lowest cost.

(h) The ~~non-Federal entity~~recipient or subrecipient must award contracts only to responsible contractors ~~possessing~~that possess the ability to perform successfully under the terms and conditions of a proposed ~~procurement. Consideration will be given to such matters as~~contract. The recipient or subrecipient must consider contractor integrity, ~~compliance with~~ public policy, ~~record~~ compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance ~~record~~, and financial and technical resources: ~~when conducting a procurement transaction.~~ See also § 200.214.

(i) The ~~non-Federal entity~~recipient or subrecipient must maintain records sufficient to detail the history of ~~each~~ procurement ~~transaction.~~ These records ~~will~~must include, ~~but are not necessarily limited to, the following:~~ ~~Rationale~~ the rationale for the ~~method of~~ procurement, ~~selection of method,~~ contract type ~~selection,~~ contractor selection or rejection, and the basis for the contract price.

~~(j)~~

~~(j) Time-and-materials type contracts.~~

(1) The ~~non-Federal entity~~recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a

## Unofficial Comparison Version

ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a ~~non-Federal entity~~ recipient or subrecipient is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) ~~Since~~Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the ~~non-Federal entity~~ recipient or subrecipient awarding such a contract must assert a high degree of oversight ~~in order~~ to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The ~~non-Federal entity alone must be~~ recipient or subrecipient is responsible, ~~in accordance with good administrative practice and sound business judgment~~, for the settlement of all contractual and administrative issues arising out of ~~procurements~~ its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. ~~These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding~~ In resolving these issues, the Federal agency ~~will~~may not substitute its judgment for that of the ~~non-Federal entity~~ recipient or subrecipient unless the matter is primarily a Federal concern. ~~Proper oversight does not relieve the recipient or subrecipient of any of its contractual responsibilities.~~ Violations of law ~~will~~must be referred to the Federal, State, or local, ~~state, or Federal~~ authority ~~having~~with proper jurisdiction.

## Unofficial Comparison Version

(1) The procurement standards in this subpart do not prohibit recipients or subrecipients from using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements; requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M-21-28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. § 3102(24))), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. Federal agencies may allow recipients and subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

### **§ 200.319 Competition.**

(a) All procurement transactions ~~for the acquisition of property or services required under~~ the Federal award must be conducted in a manner ~~providing that provides~~ full and open competition ~~and is~~ consistent with the standards of this section and § 200.320.

(b) ~~In order to~~To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that ~~develop~~ assist recipients and subrecipients with

## Unofficial Comparison Version

developing or ~~draft~~drafting specifications, requirements, statements of work, or invitations for bids ~~or requests for proposals~~ must be excluded from competing ~~for such~~on those procurements.

~~Some of the situations considered to be restrictive of competition include but are not limited to:~~

(c) Examples of requirements that may restrict 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.

~~(e) 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~~recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

## Unofficial Comparison Version

~~(1)~~ Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the ~~material, product~~ property, equipment, 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~~ property, equipment, or service to be procured ~~and, when necessary, the description must set forth those~~ provide minimum essential characteristics and standards to which ~~the~~ the property, equipment, or service 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~~ clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used ~~as a means to define the performance or other salient~~ to provide procurement requirements of procurement. The specific features of the named brand ~~which must be met by offers~~ must be clearly stated; and

(23) Identify ~~a~~ any additional requirements which the offerors must fulfill and all other factors ~~that will~~ be used in evaluating bids or proposals.

(e) The ~~non-Federal entity~~ recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products ~~which are~~ used in ~~acquiring goods and services~~ procurement transactions are current and include enough qualified sources to ensure maximum open ~~and free~~ competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. ~~Also, the non-Federal entity~~ The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

Unofficial Comparison Version

~~(f)~~ To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

**§ 200.320 Procurement Methods ~~of procurement to be followed.~~**

~~The non-Federal entity must have~~ There are three types of procurement methods described in this section: (a) informal procurement methods (for micro-purchases and simplified acquisitions); (b) formal procurement methods (through sealed bids or proposals); and (c) noncompetitive procurement methods. For any of these methods, the recipient or subrecipient ~~must maintain~~ and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 ~~for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.~~

(a) *Informal procurement methods* ~~When for small purchases.~~ These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement ~~for property or service~~ transaction under ~~at~~ the Federal award does not exceed the simplified

Unofficial Comparison Version

acquisition threshold ~~(SAT)~~, as defined in § 200.1, ~~or~~. Recipients and subrecipients may also establish a lower threshold ~~established by a non-Federal entity, 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 informal methods used for~~. Informal procurement ~~of property or services at or below the SAT methods~~ include:

(1) *Micro-purchases* —.

(i) *Distribution*. ~~The acquisition of supplies or services, the~~ The aggregate dollar amount of ~~which~~ the procurement transaction does not exceed the micro-purchase threshold ~~(See the definition of micro-purchase defined in § 200.1)~~. To the ~~maximum~~ extent practicable, the ~~non-Federal entity~~ recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards*. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the ~~non-Federal entity~~ recipient or subrecipient considers the price ~~to be~~ reasonable based on research, experience, purchase history, or other information ~~and documents it files accordingly~~. Purchase cards ~~can~~ may be used as a method of payment for micro-purchases ~~if procedures are documented and approved by the non-Federal entity~~.

(iii) *Micro-purchase thresholds*. The ~~non-Federal entity~~ recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the ~~non-Federal entity~~ recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. ~~Non-Federal entities~~ The recipient

## Unofficial Comparison Version

**or subrecipient** may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) ~~Non-Federal entity~~ *Recipient or subrecipient increase to the micro-purchase threshold up to \$50,000.* ~~Non-Federal entities~~ The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The ~~non-Federal entity~~ recipient or subrecipient may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal ~~awarding~~ agency or pass-through entity and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold **is** consistent with State law.

(v) ~~Non-Federal entity~~ *Recipient or subrecipient increase to the micro-purchase threshold over \$50,000.* Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The ~~non-federal entity~~ recipient or subrecipient must submit a request ~~with that includes~~ the requirements ~~included~~ in paragraph (a)(1)(iv) ~~of this section above~~. The increased threshold is valid until ~~there is a change~~ any factor that was relied on in ~~status in which~~ the ~~justification was approved~~ establishment and rationale of the threshold changes.



## Unofficial Comparison Version

(2) ~~Small purchases—Simplified acquisitions.~~

(i) ~~Small purchase-Simplified acquisition procedures.~~ The ~~acquisition of property or services, the~~ aggregate dollar amount of ~~which the~~ procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If ~~small purchases~~ ~~simplified acquisition~~ procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the ~~non-Federal entity~~ recipient or subrecipient.

(ii) ~~Simplified acquisition thresholds.~~ The ~~non-Federal entity~~ recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which ~~must~~ may be lower than, but not exceed, the threshold established in the FAR. ~~When applicable, a lower 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~~ Formal procurement methods are required when the value of the procurement ~~for property or service~~ transaction under a Federal ~~financial assistance~~ award exceeds the ~~SAT, or a lower threshold established by a non-Federal entity,~~ ~~formal procurement methods are required.~~ simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods ~~require following documented procedures.~~ Formal ~~procurement methods~~ also are competitive and require public advertising ~~unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section.~~ notice. The following formal methods of procurement are used for procurement ~~of property or service~~ transactions above the simplified acquisition threshold ~~or a value below the~~

## Unofficial Comparison Version

~~simplified acquisition threshold~~ determined by the ~~non-Federal entity~~ determines to be appropriate recipient or subrecipient in accordance with paragraph (a)(2)(ii):

(1) *Sealed bids*. ~~A~~This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, ~~conforming~~ conforms with all the material terms and conditions of the invitation ~~for bids~~, and is the lowest in price. The sealed bids procurement method is the preferred method for procuring construction, ~~if the conditions~~ services.

(i) ~~In order for~~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~~have been identified as willing and able to compete effectively for the business; and

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

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

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids, ~~for~~. 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~~with specific information, including any required specifications, for the bidder to properly respond;

## Unofficial Comparison Version

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

(D) A firm-fixed-price contract ~~award will be made~~ is awarded in writing to the lowest responsive bid and responsible bidder. ~~Where~~ When specified in ~~bidding documents~~ the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts ~~will~~ must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience ~~indicates that such discounts are usually taken advantage of; and~~.

(E) ~~Any or~~ The recipient or subrecipient must document and provide a justification for all bids ~~may be rejected if there is a sound documented reason; it rejects~~.

(2) *Proposals*. ~~A~~ This is a procurement method ~~in which~~ used when conditions are not appropriate for using sealed bids. This procurement method may result in 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~~ require public notice, and ~~identify~~ all evaluation factors and their relative importance; ~~must be identified~~. Proposals must be solicited from ~~an adequate number of~~ multiple qualified offerors. ~~Any~~ entities. To the maximum extent practicable, any proposals submitted in response to ~~publicized requests for proposals~~ the public notice must be considered ~~to the maximum extent practical~~.

## Unofficial Comparison Version

(ii) The ~~non-Federal entity~~ recipient or subrecipient must have a written ~~method~~ procedures 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~~ recipient or subrecipient considering price and other factors ~~considered~~; and

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

(c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement ~~can be used. Noncompetitive~~ method. The noncompetitive procurement ~~can~~ method may only be awarded used if one ~~or more~~ of the following circumstances apply:

(1) The ~~acquisition of property or services, the~~ aggregate dollar amount of ~~which~~ the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

Unofficial Comparison Version

(2) The ~~item is available only from~~ procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from ~~publicizing~~ providing public notice of a competitive solicitation;

(4) The ~~recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal awarding~~ agency or pass-through entity ~~expressly authorizes a noncompetitive procurement in response to~~ provides written request from the non-Federal entity; ~~or approval~~; or

(5) After ~~solicitation of a number of~~ soliciting several sources, competition is determined inadequate.

**§ 200.321 Contracting with small ~~and~~ businesses, minority businesses, ~~women's~~ women's business enterprises, veteran-owned businesses, and labor surplus area firms.**

~~(a) The non-Federal entity must take all necessary affirmative steps to assure~~ (a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, ~~women's~~ women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are ~~used when possible~~ considered as set forth below.

~~(b) Affirmative steps must include:~~ Such consideration means:

(1) ~~Placing qualified small and minority businesses and women's~~ These business ~~enterpris~~ types are included on solicitation lists;

(2) ~~Assuring that small and minority businesses, and women's~~ These business ~~enterpris~~ types are solicited whenever they are deemed eligible as potential sources;

## Unofficial Comparison Version

(3) Dividing ~~total requirements, when economically feasible,~~ procurement transactions into ~~smaller tasks or quantities~~ separate procurements to permit maximum participation by ~~small and minority businesses, and women's~~ these business ~~enterpris~~estypes;

(4) Establishing delivery schedules, ~~where the requirement permits, which~~ (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by ~~small and minority businesses, and women's~~ these business ~~enterpris~~estypes;

(5) ~~Using the services and assistance, as appropriate, of such~~ Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring ~~the prime~~a contractor, ~~if subcontracts are~~ under a Federal award to ~~be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of~~ apply this section to subcontracts.

### § 200.322 Domestic preferences for procurements.

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

(b) For purposes of this section:

## Unofficial Comparison Version

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

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

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

### § 200.323 Procurement of recovered materials.

(a) A ~~non-Federal entity~~ recipient or subrecipient that is a ~~state~~ State agency or agency of a political subdivision of a ~~state~~ State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, ~~of 1976 as amended~~, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or

## Unofficial Comparison Version

recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

### § 200.324 Contract cost and price.

(a) The ~~non-Federal entity~~ recipient or subrecipient must perform a cost-benefit or price analysis ~~in connection with~~ for every procurement ~~action~~ transaction, including contract modifications, in excess of the Simplified Acquisition Threshold ~~including contract modifications~~. The method and degree of analysis ~~is dependent~~ conducted depend on the facts surrounding the particular procurement ~~situation, but~~ transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the ~~non-Federal entity~~ recipient or subrecipient must ~~make independent~~ develop their own estimates before receiving bids or proposals.

~~(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.~~

~~(e)(b)~~ Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the ~~non-Federal entity~~ recipient or subrecipient under subpart E ~~of this~~



~~part.~~ The ~~non-Federal entity~~ recipient or subrecipient may reference its own cost principles ~~that~~ as long as they comply with ~~the Federal cost principles~~ subpart E.

~~(d)~~ The recipient or subrecipient may not use the “cost plus a percentage of cost” and “percentage of construction ~~cost~~ costs” methods of contracting ~~must not be used.~~

**§ 200.325 Federal ~~awarding~~ agency or pass-through entity review.**

(a) The ~~non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity,~~ may review the technical specifications ~~of~~ proposed procurements ~~whereunder the Federal award if~~ the Federal ~~awarding~~ agency or pass-through entity believes ~~such~~ the review is needed to ensure that the item or service specified is the one being proposed for acquisition. ~~The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity.~~ This review ~~generally will~~ should take place prior to the time the ~~specification~~ ~~is~~ specifications are incorporated into a solicitation document. ~~However, if~~ When the ~~non-Federal entity~~ recipient or subrecipient desires to ~~have~~ accomplish the review ~~accomplished~~ after a solicitation has been developed, the Federal ~~awarding~~ agency or pass-through entity may still review the specifications, ~~with such.~~ In those cases, the review ~~usually~~ should be limited to the technical aspects of the proposed purchase.

~~(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review,~~ (b) When requested, the recipient or subrecipient must provide procurement documents, ~~(such as requests for proposals or,~~ invitations for bids, or independent cost estimates, ~~when:-)~~ to the Federal agency or pass-through

## Unofficial Comparison Version

entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

- (1) The ~~non-Federal entity's~~ recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition, or only one bid ~~or offer~~ is **expected to be** received in response to a solicitation;
  - (3) The procurement, ~~which~~ is expected to exceed the Simplified Acquisition Threshold, **and** specifies a "brand name" product;
  - (4) The ~~proposed contract~~ procurement is ~~more than~~ expected to exceed the Simplified Acquisition Threshold, and a **sealed bid procurement** is to be awarded to **an entity** other than the apparent low bidder ~~under a sealed bid procurement; or;~~ or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The ~~non-Federal entity~~ recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal ~~awarding~~ agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The ~~non-Federal entity~~ recipient or subrecipient may request that ~~its procurement system be reviewed by~~ the Federal ~~awarding~~ agency or pass-through entity **review its procurement system** to determine whether ~~its system~~ it meets these standards ~~in order~~ for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded ~~on a regular basis;~~ regularly.

## Unofficial Comparison Version

(2) The ~~non-Federal entity~~ recipient or subrecipient may self-certify its procurement system. ~~Such~~ However, self-certification ~~must~~ does not limit the Federal ~~awarding agency's~~ or pass-through-through entity's right to ~~survey~~ review the system. Under a self-certification procedure, the Federal ~~awarding~~ agency or pass-through entity may rely on written assurances from the ~~non-Federal entity~~ recipient or subrecipient that it is complying with ~~these~~ the standards of this part. The ~~non-Federal entity~~ recipient or subrecipient must cite specific policies, procedures, regulations, or standards as ~~being in compliance~~ complying with these requirements and have its system available for review.

### § 200.326 Bonding requirements.

~~For~~ The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold. ~~Before doing so,~~ the Federal ~~awarding~~ agency or pass-through entity ~~may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination~~ must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The ~~"bid guarantee"~~ must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute ~~such~~ any required contractual ~~documents as may be required~~ obligations within the ~~time~~ specified timeframe.

## Unofficial Comparison Version

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

(c) A payment bond on the ~~contractor's part of the contractor~~ for 100 percent of the contract price. A "payment bond" is ~~one~~ bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for ~~in the~~ under a contract.

### § 200.327 Contract provisions.

The ~~non-Federal entity's~~ recipient's or subrecipient's contracts must contain the applicable provisions described in ~~appendix~~ Appendix II ~~to~~ of this part.

### Performance and Financial Monitoring and Reporting

#### § 200.328 Financial reporting.

~~Unless otherwise approved by OMB, the~~ (a) The Federal ~~awarding~~ agency must ~~solicit~~ only ~~therequire~~ OMB-approved ~~governmentwide~~ government-wide data elements ~~for collection~~ ~~of~~ on recipient financial ~~information~~ (at reports. At the time of publication, this consists of the Federal Financial Report ~~or such~~ (SF-425); however, this also applies to any future, OMB-approved, ~~governmentwide~~ government-wide data elements available from the OMB-designated standards lead. ~~This information~~

(b) The Federal agency or pass-through entity must ~~be collected with the frequency~~ ~~required by the terms and conditions of the Federal award, but~~ collect financial reports no less ~~frequently~~ than annually ~~or~~. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly ~~except in unusual circumstances, for example where more~~

## Unofficial Comparison Version

~~frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.~~

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

### § 200.329 Monitoring and reporting program performance.

(a) Monitoring by the recipient. The recipient or subrecipient is responsible for the oversight of the Federal award. The recipient or subrecipient must monitor its activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient or subrecipient must cover each program, function, or activity. See also § 200.332.

(b) Reporting program performance. ~~reporting. The Federal awarding~~ The Federal agency must use OMB-approved common information collections, as applicable, when ~~providing financial and requesting~~ performance reporting information.

The ~~§ 200.329 Monitoring and reporting program performance.~~

~~(a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with only require OMB-approved government-wide data elements in collection of performance information including Research Performance Progress Reports if applicable. Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect performance reports in coordination with financial reports. When~~ See also ~~§ 200.332.~~

~~(b) Reporting program performance. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and~~ Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (e.g., through

## Unofficial Comparison Version

~~unit cost data).~~ In some instances (e.g., for example, discretionary research awards), this ~~will~~ may be limited to the requirement to submit technical performance reports ~~(to be evaluated in accordance with).~~ Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. As noted in OMB Circular A-11, Part 6, Section 280, measures of customer experience are of co-equal importance as traditional measures of financial and operational performance. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring of the Federal award. ~~Federal awarding agency policy).~~ ~~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.~~ agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination.

~~(c) Non-construction performance reports. The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.~~(c)  
*Submitting performance reports.*

(1) The ~~non-Federal entity~~ recipient or subrecipient must submit performance reports ~~at the intervals~~ required by the Federal ~~awarding agency or pass-through entity to best inform improvements in program outcomes and productivity.~~ award. 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.~~ if specific conditions are applied (See § 200.208).

## Unofficial Comparison Version

Reports submitted annually by the ~~non-Federal entity and/or pass-through entity~~ recipient or ~~subrecipient~~ must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal ~~awarding~~ agency or pass-through entity may require annual reports before the anniversary dates of multiple--year Federal awards. The final performance report submitted by the ~~non-Federal entity and/or pass-through entity~~ recipient must be due no later than 120 calendar days after the period of performance ~~end date~~. A subrecipient must submit a final performance report to ~~the~~ pass-through entity, no later than 90 calendar days after the ~~conclusion of the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award.~~ See also § 200.344. ~~If a justified request is submitted by a non-Federal entity, the~~ The Federal agency or pass-through entity may extend the due date for any performance report ~~with justification from the recipient or subrecipient.~~

(2) As ~~appropriate in accordance with above mentioned~~ applicable, performance reporting, ~~these reports will~~ should contain, ~~for each Federal award, brief~~ information on the following ~~unless other data elements are approved by OMB in the agency information collection request:-~~:

(i) A comparison of ~~actual~~ accomplishments to the objectives of the Federal award established for the ~~period. Where the accomplishments of the Federal award can be quantified, a computation of the cost~~ reporting period (for example, ~~related~~ comparing costs to units of accomplishment) ~~may be required if that information will be useful.~~ Where performance trend



## Unofficial Comparison Version

data and analysis would be informative to the Federal ~~awarding~~ agency program, the Federal ~~awarding~~ agency should include this as a performance reporting requirement.

(ii) ~~The reasons~~ Explanations on why established goals or objectives were not met, ~~if appropriate~~; and

(iii) Additional ~~pertinent~~ information ~~including, when appropriate~~, analysis, and explanation of cost overruns or ~~high~~ higher-than-expected unit costs.

(d) *Construction performance reports.* ~~For the most part, onsite~~ Federal agencies or pass-through-through entities rely on on-site technical inspections and certified percentage of completion data ~~are relied on heavily by Federal awarding agencies and pass-through entities~~ to monitor progress under Federal awards ~~and subawards~~ for construction. ~~The~~ Therefore, the Federal ~~awarding~~ agency or pass-through entity may require additional performance reports ~~only~~ when ~~considered~~ necessary to ensure the goals and objectives of Federal awards are met.

(e) *Significant developments.* ~~Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:~~ The recipient or subrecipient must inform the Federal agency or pass-through entity of any significant developments between performance reporting due dates that could impact the Federal award. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant

## Unofficial Comparison Version

developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

~~(f) *Site visits.* (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.~~

~~(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.~~

~~(f) *Site visits.* The Federal **awarding** agency or pass-through entity may ~~make~~conduct in-person or virtual site visits as warranted ~~by program needs.~~~~

(g) *Performance report requirement waiver.* The Federal **awarding** agency may waive any performance report ~~required by this part if not needed.~~ that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

### § 200.330 Reporting on real property.

The Federal **awarding** agency or pass-through entity must require ~~a non-Federal entity~~the recipient or subrecipient to submit ~~reports~~ at least ~~annually~~annual reports on the status of real property in which the Federal Government retains an interest, ~~unless.~~ In instances where the Federal **Government's** interest in the real property extends for 15 years or ~~longer.~~ ~~In those instances where the Federal interest attached is for a period of 15 years or more,~~ the Federal **awarding** agency or pass-through entity, ~~at its option,~~ may require the ~~non-Federal entity~~recipient or subrecipient to report at various multi-year frequencies ~~(e.g., every two years or every three~~

~~years, not to. Reports submitted at multi-year frequencies may not exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).~~ The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

## **Subrecipient Monitoring and Management**

### **§ 200.331 Subrecipient and contractor determinations.**

~~The non-Federal~~An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, ~~depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make.~~ The recipient or subrecipient is responsible for making case-by-case determinations to determine whether ~~each agreement it makes for the disbursement of Federal program funds casts the party~~ the entity receiving the Federal funds ~~in the role of~~ is a subrecipient or a contractor. The Federal ~~awarding~~ agency may ~~supply and~~ require recipients the recipient or subrecipient to comply with additional guidance to ~~support~~ inform these determinations ~~provided such guidance.~~ The Federal agency does not ~~conflict with this section.~~ have a direct legal relationship with subrecipients or contractors of any tier. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. Therefore, the recipient or subrecipient is responsible for determining the nature of an agreement. The substance of the relationship is more important than the form of the agreement.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of ~~the~~ Federal award and creates a Federal financial assistance relationship with ~~the~~a subrecipient. See ~~the~~

## Unofficial Comparison Version

definition ~~for~~ of *Subaward* in § 200.1 ~~of this part~~. Characteristics ~~which~~ that support the classification of the ~~non-Federal~~ entity as a subrecipient include, ~~but are not limited to~~, when the ~~non-Federal~~ entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether ~~the~~ objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- ~~(5) In accordance with its agreement, uses the Federal funds to carry out~~(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors*. A contract is for the purpose of obtaining goods and services for the ~~non-Federal entity's own~~ recipient's or subrecipient's use and creates a procurement relationship with ~~the~~ contractor. See the definition of *contract* in § 200.1 ~~of this part~~. Characteristics ~~indicative of that~~ support a procurement relationship between the ~~non-Federal entity~~ recipient or subrecipient and a contractor ~~include, but are not limited to~~, when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the ~~operation~~ implementation of ~~the~~ Federal program; and

## Unofficial Comparison Version

(5) Is not subject to compliance requirements of ~~the~~ Federal program as a result of the agreement, ~~though~~. However, similar requirements may apply for other reasons.

~~(e) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.~~

### § 200.332 Requirements for pass-through entities.

~~AHA~~ pass-through ~~entities~~entity must:

~~(a)~~(a) Confirm in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the ~~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~~ provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must amend a subaward if additional information becomes available ~~to describe the Federal award and subaward~~ or data elements change. Required information includes:

(1) Federal award identification.

(i) ~~Subrecipient~~Subrecipient's name (~~which~~ must match the name associated with its unique entity identifier);

(ii) ~~Subrecipient's~~Subrecipient's unique entity identifier;

## Unofficial Comparison Version

- (iii) Federal Award Identification Number (FAIN);
- (iv) Federal Award Date ~~(see the definition of Federal award date in § 200.1 of this part)~~  
~~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 in the subaward;~~
- (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through  
entity, including the current financial obligation;
- (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-  
through entity;
- (x) Federal award project description, as required ~~to be responsive to~~ by the Federal  
Funding Accountability and Transparency Act (FFATA);
- (xi) Name of ~~the~~ Federal ~~awarding~~ agency, pass-through entity, and contact information  
for awarding official of the ~~Pass~~pass-through entity;
- (xii) Assistance Listings ~~title and number and Title~~; the pass-through entity must identify  
the dollar amount made available under each Federal award and the Assistance Listings Number  
at ~~the~~ time of disbursement;
- (xiii) Identification of whether the Federal award is ~~R&D~~for research and development;  
and
- (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is ~~charged~~)  
~~perused in accordance with § 200.414(-).~~

## Unofficial Comparison Version

(2) All requirements of the subaward, including 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~~ responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect Cost Rate;

(i) An approved ~~federally recognized~~ indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, ~~the~~ pass-through entity must determine the appropriate rate in collaboration with the subrecipient, ~~which is either:~~

~~(A).~~ The ~~negotiated~~ indirect cost rate may be either:

~~(A)~~ An indirect cost rate negotiated between the pass-through entity and the subrecipient; ~~which can.~~ These rates may be based on a prior negotiated rate between a different ~~PTE~~ pass-through entity and the ~~same~~ subrecipient. ~~If basing the rate on a previously negotiated rate~~ In these instances, the pass-through entity is not required to collect information justifying ~~this~~ the rate, but may elect to do so; or

~~(B)~~ The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of ~~a~~ the de minimis indirect cost rate if the subrecipient has ~~a Federally~~ an approved indirect cost rate. ~~negotiated with the Federal~~

## Unofficial Comparison Version

**Government.** Subrecipients ~~can~~ may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to ~~have access to the subrecipient's~~ subrecipient's records and financial statements ~~as necessary~~ for the pass-through entity to ~~meet the fulfill its monitoring requirements of this part~~; and

(6) Appropriate terms and conditions concerning ~~the~~ closeout of the subaward.

~~(b) Evaluate~~(c) Prior to issuing a subaward, evaluate each ~~subrecipient's~~ subrecipient's risk of noncompliance with ~~Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining a~~ subaward to determine the appropriate subrecipient monitoring described in ~~paragraphs (d) and~~ paragraph (e) of this section, ~~which may include consideration of such factors as:~~. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The ~~subrecipient's~~ subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits ~~including~~. This includes considering whether or not the subrecipient receives a Single Audit in accordance with ~~Subpart F of this part,~~ subpart F and the extent to which the same or similar ~~subaward has~~ subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems, ~~policies, or procedures~~; and

(4) ~~The extent and results of Any~~ Federal ~~awarding~~ agency monitoring ~~(e.g., results (for example, if the subrecipient also receives Federal awards directly from a~~ the Federal ~~awarding~~ agency).



## Unofficial Comparison Version

~~(e) Consider imposing~~(d) If appropriate, consider implementing specific subaward conditions ~~upon a subrecipient if appropriate as in~~ a subaward described in § 200.208 and notify the Federal agency of the specific conditions.

~~(de) Monitor the activities of thea subrecipient as necessary to ensure that thea subaward is used for authorized purposes, in compliance~~complies with Federal statutes, regulations, and the terms and conditions of the subaward~~;-~~. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and ~~that~~ objectives of the subaward ~~performance goals~~ are achieved. ~~Pass-through entity~~In monitoring ~~of thea~~ subrecipient, a pass-through entity must ~~include~~:-

(1) ~~Reviewing~~Review financial and performance reports ~~required by the pass through entity~~.

(2) ~~Following up and ensuring~~Ensure that the subrecipient takes ~~timely and appropriate~~corrective action on all ~~deficiencies pertaining to~~significant developments that negatively affect the ~~Federal award provided to the~~subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient ~~from~~ of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity ~~detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken~~with information on their plan for corrective action and any assistance needed to ~~address Single Audit findings related to the particular subaward~~. resolve the situation.

## Unofficial Comparison Version

(3) ~~Issuing~~Issue 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 responsible for resolving~~Resolve audit findings specifically related to the subaward ~~and~~. However, the pass-through entity is not responsible for resolving ~~cross-cutting~~cross-cutting findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report ~~posted in the Federal Audit Clearinghouse~~ and has not ~~otherwise~~ been excluded from ~~receipt of~~receiving Federal funding (e.g., meaning, has not been debarred or suspended), the pass-through entity may rely on the ~~subrecipient's~~subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(~~3~~)(~~vii~~4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(ef) Depending upon the pass-through ~~entity's~~entity's assessment of the risk posed by the subrecipient (as described in paragraph (bc) 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~~

## Unofficial Comparison Version

(2) Performing ~~on-site reviews of visits~~ to review the ~~subrecipient's~~ subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

~~(fg) Verify that every~~ a subrecipient is audited as required by ~~Subpart~~ 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.~~

~~(gh) Consider whether the results of the subrecipient's audits~~ a subrecipient's audit, on-site reviews, or other monitoring ~~indicate conditions that~~ necessitate adjustments to the pass-through ~~entity's own~~ entity's records.

~~(hi) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.~~

### **§ 200.333 Fixed amount subawards.**

With prior written approval from the Federal ~~awarding~~ agency, ~~a pass-through entity the recipient~~ may provide subawards based on fixed amounts ~~up to the Simplified Acquisition Threshold, provided that the~~. Fixed amount subawards ~~must~~ meet the requirements ~~for fixed amount awards in of~~ § 200.201.

### **Record Retention and Access**

#### **§ 200.334 ~~Retention~~ Record retention requirements ~~for~~.**

~~The recipient or subrecipient must retain all Federal award records.~~

~~Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of for three years from the date of submission of the final expenditure financial report or, for Federal. For awards that are~~

## Unofficial Comparison Version

renewed quarterly or annually, ~~the recipient or subrecipient must retain records for three years from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency.~~ Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through ~~entity in the case of a subrecipient. Federal awarding agencies and pass-through entities~~ ~~must~~ may not impose any other record retention requirements ~~upon non-Federal entities. The only exceptions are except~~ for the following:

~~(a) If any litigation, claim, or audit is started before the expiration of the 3-year period,~~  
~~the~~(a) The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken ~~– if any litigation, claim, or audit is started before the expiration of the three-year period.~~

(b) When the ~~non-Federal entity~~ recipient or subrecipient is notified in writing by the Federal ~~awarding agency or pass-through entity~~, cognizant agency for audit, oversight agency for audit, ~~or cognizant agency for indirect costs, or pass-through entity~~ to extend the retention period.

~~(c) Records~~The records for ~~real~~ property and equipment acquired with the support of Federal funds must be retained for ~~3~~three years after final disposition.

~~(d) When~~The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal ~~awarding agency or pass-through entity~~, the ~~3-year retention requirement is not applicable to the non-Federal entity.~~ agency.

## Unofficial Comparison Version

(e) ~~Records~~The records for program income ~~transaction~~earned after the period of performance. ~~In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period be retained for the records pertaining to the earning of the program income starts~~three years from the end of the ~~non-Federal entity's~~recipient's or subrecipient's fiscal year in which the program income is earned.

(f) ~~Indirect cost rate proposals and cost allocations plans.~~This paragraph only applies to the following types if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of ~~documents and their supporting~~the Federal award.

(f) The records: ~~Indirect~~ for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) ~~;-) must be retained according to the applicable option below:~~

(1) *If submitted for negotiation.* ~~If the~~When a proposal, plan, or other computation is ~~required to~~must be submitted to the Federal Government ~~(or to the pass-through entity)~~to form the basis for negotiation of ~~the an~~ indirect cost rate; ~~(or other standard rates)~~, then the ~~3~~three-year retention period for its supporting records starts from the date of ~~such~~ submission.

(2) *If not submitted for negotiation.* ~~If the~~When a proposal, plan, or other computation is not required to be submitted to the Federal Government ~~(or to form the pass-through entity)~~basis for negotiation ~~purposes,~~of an indirect cost rate (or other standard rates), then the ~~3~~three-year retention period for ~~the proposal, plan, or computation and~~its supporting records starts from the

end of the fiscal year (or ~~other another~~ accounting period) covered by the proposal, plan, or other computation.

**§ 200.335 Requests for transfer of records.**

The Federal ~~awarding~~ agency must request ~~the~~ transfer of ~~certain~~ records to its custody from the ~~non-Federal entity recipient or subrecipient~~ when it determines that the records possess long-term retention value. However, ~~in order to avoid duplicate recordkeeping,~~ the Federal ~~awarding~~ agency may ~~make arrangements~~ arrange for the ~~non-Federal entity recipient or subrecipient~~ to retain ~~any~~ the records that have long-term retention value so long as they are continuously ~~needed for joint use.~~ available to the Federal Government.

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

~~The Federal awarding agency and the non-Federal entity should, whenever~~ When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award ~~related~~ information in an open file, non-licensed, 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~~ Upon request, 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 recipient or subrecipient.~~ The Federal agency or pass-through entity must not require ~~more than an original and two copies.~~ When additional copies of Federal award information submitted in paper versions. The recipient or subrecipient does not need to create and retain paper copies when

## Unofficial Comparison Version

original records are electronic and cannot be altered, ~~there is no need to create and retain paper copies. When original records are paper,~~ In addition, the recipient or subrecipient may substitute electronic versions ~~may be substituted~~ of original paper records through ~~the use of~~ duplication or other forms of electronic ~~media~~ conversion, provided that ~~they~~ the procedures are subject to periodic quality control reviews. ~~Quality control reviews must ensure that electronic conversion procedures provide reasonable safeguards against the alteration, and of records and assurance that records remain in a format that is readable by a computer system.~~

### § 200.337 Access to records.

(a) *Records of ~~non-Federal entities~~-recipients and subrecipients.* The Federal ~~awarding~~ agency, ~~or pass-through entity,~~ Inspectors General, the Comptroller General of the United States, ~~and the pass-through entity,~~ or any of their authorized representatives, must have the right of access to any ~~documents, papers, or other~~ records of the ~~non-Federal entity which are~~ recipient or subrecipient pertinent to the Federal award, ~~in order~~ to ~~make~~ perform audits, ~~examinations, excerpts, and transcripts.~~ ~~The~~ execute site visits, or for any other official use. This right also includes timely and reasonable access to the ~~non-Federal entity's~~ recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents, ~~or the Federal award in general.~~

(b) *Extraordinary and rare circumstances.* The recipient or subrecipient and Federal agency or pass-through entity must take measures to protect the name of victims of a crime when ~~access to the victim's name is necessary.~~ Only under extraordinary and rare circumstances would such access include a review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this

information. ~~When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency.~~ Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head ~~or delegate~~ of the Federal ~~awarding agency or delegate~~.

(c) *Expiration of right of access.* The Federal agency's or pass-through-through entity's rights of access ~~in this section~~ are not limited to the required retention period of this part but last as long as the records are retained. Federal ~~awarding agencies and~~ pass-through-through entities must not impose any other access requirements upon ~~non-Federal entities recipients and subrecipients~~.

#### **§ 200.338 Restrictions on public access to records.**

~~No Federal awarding agency agencies or pass-through-through entities may not place restrictions on the non-Federal entity recipient or subrecipient that limit public access to the records of the non-Federal entity recipient or subrecipient pertinent to a Federal award, except for protected personally identifiable information (PII) or other sensitive information when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's the recipient's or subrecipient's control except as required under by § 200.315. Unless required by Federal, state State, local, and tribal statute, non-Federal entities law, recipients and subrecipients are not~~



required to permit public access to their records. The ~~non-Federal entity's~~ recipient's or subrecipient's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

## Remedies for Noncompliance

### § 200.339 Remedies for noncompliance.

~~If a non-~~The Federal ~~entity~~ agency or pass-through entity may implement specific conditions if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or ~~the~~ terms and conditions of ~~at~~ the Federal award~~.~~. See § 200.208 for additional information on specific conditions. When the Federal ~~awarding agency or pass-through entity may impose additional conditions, as described in § 200.208.~~ If the Federal ~~awarding~~ agency or pass-through entity determines that noncompliance cannot be remedied by imposing ~~additional~~ specific conditions, the Federal ~~awarding~~ agency or pass-through entity may take one or more of the following actions~~, as appropriate in the circumstances.:~~:

(a) Temporarily withhold ~~cash~~ payments ~~pending correction of the deficiency by the non-Federal entity or more severe enforcement~~ until the recipient or subrecipient takes corrective action ~~by the Federal awarding agency or pass-through entity.~~.

(b) Disallow ~~(that is, deny both use of funds and any applicable matching credit for)~~ costs for all or part of the ~~cost of the~~ activity associated with the noncompliance of the recipient or ~~action not in compliance.~~ subrecipient.

(c) ~~Wholly or partly suspend~~ Suspend or terminate the Federal award~~.~~ in part or in its entirety.

## Unofficial Comparison Version

(d) Initiate suspension or debarment proceedings as authorized ~~under~~in 2 CFR part 180 and the Federal ~~awarding agency~~agency's regulations ~~(or in the case of a pass-through entity, entities must recommend such a proceeding)~~suspension or debarment proceedings for a subrecipient or subcontractor be initiated by ~~the~~ Federal ~~awarding agency~~).

(e) Withhold further Federal funds (new awards or continuation funding) for the project or program.

(f) ~~Take Pursue~~ other ~~remedies that may be~~legally available remedies.

### § 200.340 Termination.

(a) The Federal award may be terminated in ~~whole or in part~~ or its entirety as follows:

(1) By the Federal ~~awarding agency~~ or pass-through entity, if ~~a non-Federal entity~~the recipient or subrecipient fails to comply with the terms and conditions of ~~the~~ 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~~recipient or subrecipient, in which case the two parties must agree upon the termination conditions, ~~including~~. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

~~(4) By the non-Federal entity~~recipient or subrecipient upon sending ~~to~~the Federal ~~awarding agency or pass-through entity~~ a written notification ~~setting forth~~of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal ~~awarding agency or pass-through entity~~ determines ~~in the case of partial termination~~that the ~~reduced or modified~~remaining portion of the Federal award ~~or~~

## Unofficial Comparison Version

~~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

(54) By the Federal ~~awarding~~ agency or pass-through entity pursuant to ~~termination provisions included in the~~ terms and conditions of the Federal award.

(b) ~~A~~The Federal ~~awarding~~ agency ~~should~~ or pass-through entity must clearly and unambiguously specify all termination provisions ~~applicable to each~~ in the terms and conditions of the Federal award, ~~in applicable regulations or in the award, consistent with this section.~~

(c) When ~~at the~~ Federal ~~awarding~~ agency terminates ~~at the~~ Federal award prior to the end of the period of performance due to the ~~non-Federal entity's~~ recipient's material failure to comply with the ~~Federal award~~ terms and conditions of the Federal award, the Federal ~~awarding~~ agency must report the termination ~~to the OMB-designated integrity and performance system accessible through SAM (currently FAPHS) in SAM.gov.~~ A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in SAM.gov.

(1) The information required under paragraph (c) of this section is not to be reported ~~to~~ ~~designated integrity and performance system~~ in SAM.gov until the ~~non-Federal entity~~ recipient has either—:

(i) ~~Has exhausted~~ Exhausted its opportunities to object or challenge the decision, ~~–~~ (see § 200.342); or

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

## Unofficial Comparison Version

(2) If a Federal ~~awarding~~ agency, after entering information ~~into the designated integrity and performance system~~ about a termination in SAM.gov, 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~~. The Federal ~~awarding~~ agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

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

(d) When ~~at~~ the Federal award is terminated in part or ~~partially terminated, both~~ its entirety, the Federal ~~awarding~~ agency or pass-through entity and ~~the non-Federal entity~~ recipient or ~~subrecipient~~ remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

(e) A Federal agency determination to not award continuation funding does not constitute a termination. For example, if an award no longer effectuates the program goals or agency priorities or continued Federal funding is not available.

**§ 200.341 Notification of termination requirement.**

(a) The Federal agency or pass-through entity must provide ~~to the non-Federal entity~~ ~~an~~written notice of termination ~~to the recipient or subrecipient~~. The written notice of termination should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated, if applicable.

(b) If the Federal award is terminated for the ~~non-Federal entity's~~recipient'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~~—the following:

(1) The termination decision will be reported ~~to the OMB-designated integrity and performance system accessible through~~in SAM (~~currently FAPHS~~);.gov;

(2) The information will be available in ~~the OMB-designated integrity and performance system for a period of~~SAM.gov for five years (and then archived) from the date of the termination~~, then archived~~;

(3) A Federal ~~awarding agencies~~agency that ~~consider~~considers making a Federal award to the ~~non-Federal entity~~recipient 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 Federal share of the Federal award~~that is expected to exceed the simplified acquisition threshold over the period of performance; ~~must consider the information regarding the recipient's material failure to comply in judging whether the entity is qualified to receive the Federal award.~~

## Unofficial Comparison Version

(4) The ~~non-Federal entity~~ recipient may comment on any information ~~the OMB-~~ designated integrity and performance system contains in SAM.gov about the ~~non-Federal entity~~ recipient for future consideration by Federal ~~awarding~~ agencies. The ~~non-Federal entity~~ recipient may submit comments ~~to the awardee integrity and performance portal accessible through SAM (currently (CPARS))-~~ in SAM.gov.

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

(c) Upon termination of ~~a~~ the Federal award, the Federal ~~awarding~~ agency must provide the information ~~required under to USA~~ *Spending.gov* as required by the Federal Funding Accountability and Transparency Act (FFATA-~~to~~). In addition, the Federal ~~website established to fulfill the requirements of FFATA,~~ and agency must update or notify any other relevant ~~governmentwide~~ government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. ~~417b~~ 2313 and 31 U.S.C. 3321 ~~and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.~~

### **§ 200.342 Opportunities to object, hearings, and appeals.**

The Federal agency or pass-through entity must maintain written procedures for processing objections, hearings, and appeals. Upon ~~taking any~~ initiating a remedy for ~~non-compliance,~~ noncompliance (for example, disallowed costs, a corrective action plan, or termination), the Federal ~~awarding~~ agency or pass-through entity must provide the ~~non-Federal entity~~ recipient or subrecipient with an opportunity to object and provide information ~~and~~

~~documentation~~ challenging the ~~suspension or termination action, in accordance with written processes and procedures published by the~~action. The Federal ~~awarding agency. The Federal~~awarding agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the ~~non-Federal entity~~recipient or ~~subrecipient~~ is entitled under any statute or regulation applicable to the action involved.

**§ 200.343 Effects of suspension and termination.**

Costs to the ~~non-Federal entity~~recipient or ~~subrecipient~~ resulting from financial obligations incurred by the ~~non-Federal entity~~recipient or ~~subrecipient~~ during a suspension or after the termination of a Federal award ~~or subaward~~ are not allowable unless the Federal ~~awarding~~ agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the ~~non-Federal entity~~recipient or ~~subrecipient~~ before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

**Closeout**

**§ 200.344 Closeout.**

(a) The Federal ~~awarding~~ agency or pass-through entity ~~will~~must 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. When~~

## Unofficial Comparison Version

the recipient or subrecipient fails to complete the ~~requirements~~necessary administrative actions or the required work for an award, the Federal ~~awarding~~agency or pass-through entity ~~will~~must proceed ~~to close out the Federal award~~with closeout based on 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~~administrative actions required at the end of the period of performance.

~~(a) The~~(b) A recipient must submit, all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the ~~end date~~conclusion of the period of performance, ~~all~~. A subrecipient must submit all reports (financial, performance, and other reports ~~as~~required by ~~the terms and conditions of the Federal award~~. A subrecipient ~~must submit~~a subaward) to the pass-through entity, no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient) ~~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~~). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when ~~requested and justified by the non-Federal entity, as~~all applicable, indirect cost rates have been finalized.

~~(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity~~(c) The recipient must liquidate all financial obligations incurred under the



## Unofficial Comparison Version

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.~~ conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(ed) The Federal ~~awarding~~ agency or pass-through entity must ~~make prompt~~not delay payments to the ~~non-Federal entity~~recipient or subrecipient for costs meeting the requirements ~~in Subpart E of this part under the Federal award being closed out.~~subpart E.

(de) The ~~non-Federal entity~~recipient or subrecipient must ~~promptly~~immediately refund any ~~balances of unobligated cash funds~~ 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~~ § 200.346, ~~for requirements regarding unreturned amounts that become delinquent debts.~~.

(e) ~~Consistent with the terms and conditions of the~~ The Federal ~~award, the Federal~~ ~~awarding~~ agency or pass-through entity must make ~~a settlement for any upward or downward~~all necessary adjustments to the Federal share of costs after closeout reports are received. For example, the disallowance of any costs or the deobligation of an unliquidated balance.

(fg) The ~~non-Federal entity~~recipient or subrecipient must account for any ~~real and personal~~ property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

## Unofficial Comparison Version

~~(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards.~~ (h) The Federal awarding agency must make every effort to complete all 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 indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually agree with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to the recipient to close out with the information available within one year of the period of performance end date.~~ an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

~~(i) If the non-Federal entity recipient does not submit all reports in accordance comply with the requirements of this section within one year of the period of performance end date, including submitting all final reports, the Federal awarding agency must report the non-Federal entity's recipient's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPHS). Federal awarding Federal award in SAM.gov. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. Federal agencies may also pursue other enforcement actions per as appropriate. See § 200.339.~~

### **Post-Closeout Adjustments and Continuing Responsibilities**

**§ 200.345 Post-closeout adjustments and continuing responsibilities.**

(a) The closeout of ~~the~~ Federal award does not affect any of the following:

(1) The right of the Federal ~~awarding~~ agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or ~~other~~ review. ~~The~~ However, the Federal ~~awarding~~ agency or pass-through entity must make ~~any cost disallowance determination~~ determinations to ~~disallow costs~~ and notify the ~~non-Federal entity~~ recipient or subrecipient within the record retention period.

(2) The ~~recipient's or subrecipient's~~ requirement ~~for the non-Federal entity to~~ return ~~any funds due~~ or right to receive any remaining and available funds as a result of ~~later~~ refunds, corrections, ~~or other transactions including~~ final indirect cost rate adjustments: ~~(unless the~~ Federal award in closed in accordance with § 200.344(h)), or other transactions.

(3) The ability of the Federal ~~awarding~~ agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F ~~of this part~~.

(5) Property management and disposition requirements in §§ 200.310 through 200.316 ~~of this subpart~~.

(6) Records retention as required in §§ 200.334 through 200.337 ~~of this subpart~~.

(b) After ~~the~~ closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part. ~~This may only be done~~ with the consent of the ~~Federal~~ awarding Federal agency or pass-through entity and the ~~non-Federal entity~~ recipient or subrecipient, provided the responsibilities of the ~~non-Federal entity~~ recipient or subrecipient

## Unofficial Comparison Version

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~~ recipient or subrecipient, as appropriate.

### Collection of Amounts Due

#### § 200.346 Collection of amounts due.

~~(a) Any Federal funds paid to the non-Federal entity recipient or subrecipient in excess of the amount to which that the non-Federal entity recipient or subrecipient is finally determined to be entitled to under the terms of the Federal award constitute~~ constitutes a debt to the Federal Government. ~~If not paid within 90 calendar days after demand, the~~ The Federal agency must collect all debts arising out of its Federal ~~awarding agency may reduce the debt by:~~

- ~~(1) Making an administrative offset against other requests for reimbursements;~~
- ~~(2) Withholding advance payments otherwise due to the non-Federal entity; or~~
- ~~(3) Other action permitted by Federal statute.~~

~~(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt~~ awards in accordance with the Federal Claims Standards for the Administrative Collection ~~Standard~~s of Claims (31 CFR ~~parts 900 through 999~~). ~~The date from which interest is computed is not extended by litigation or the filing of any form of appeal.~~ 901).

### Subpart E—Cost Principles

#### General Provisions

#### § 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

## Unofficial Comparison Version

(a) The ~~non-Federal entity~~ recipient or subrecipient is responsible for the efficient and effective administration of the Federal award through ~~the application of~~ sound management practices.

(b) The ~~non-Federal entity assumes responsibility~~ recipient or subrecipient is responsible for administering Federal funds in a manner consistent with ~~underlying agreements, program objectives~~ Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) The ~~non-Federal entity~~ recipient or subrecipient, in recognition of its ~~own~~ unique combination of staff, facilities, and experience, ~~has the primary responsibility~~ is responsible for employing ~~whatever form of sound~~ organization and management techniques ~~may be~~ necessary ~~in order to assure~~ ensure the proper and efficient administration of the Federal award.

(d) The ~~application of these cost principles should require no significant changes in the internal~~ accounting policies and practices of the ~~non-Federal entity~~. However, the accounting practices of the ~~non-Federal entity~~ recipient or subrecipient must be consistent with these cost principles and support the accumulation of costs as required by ~~the~~ these cost principles, ~~and must provide for~~ including maintaining adequate documentation to support costs charged to the Federal award.

(e) ~~The~~ cognizant agency for indirect costs should ensure that the recipient or subrecipient consistently applies these cost principles when reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, ~~the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals.~~ Where wide variations exist in the treatment of a given cost item by the ~~non-Federal entity~~ recipient or

## Unofficial Comparison Version

~~subrecipient~~, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 ~~of this part.~~

(f) For ~~non-Federal entities~~ recipients and subrecipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The ~~non-Federal entity~~ recipient or subrecipient may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

### § 200.401 Application.

(a) *General.* ~~These~~ The recipient or subrecipient must apply these principles ~~must be used~~ in determining ~~the allowable costs of work performed by the non-Federal entity~~ under Federal awards. ~~These~~ The recipient or subrecipient must also use these principles ~~also must be used by the non-Federal entity~~ as a guide in ~~the pricing of~~ fixed-price contracts and subcontracts ~~where~~ when costs are used in determining the appropriate price. ~~The~~ These cost principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on ~~such~~ items ~~such~~ as education allowance or published tuition rates and fees.

(2) ~~For IHEs, capitation~~ Capitation awards, ~~which are awards to~~ Institutions of Higher Education (IHEs) based on case counts or ~~the~~ number of beneficiaries ~~according to the terms and conditions of the Federal award.~~

## Unofficial Comparison Version

(3) Fixed amount awards. See ~~also § 200.1 Definitions and~~ 200.201.

(4) Federal awards to hospitals (see ~~appendix Appendix IX to this part~~).

(5) ~~Grants and cooperative agreements for food commodities.~~

(6) Other awards under which the ~~non-Federal entity~~ recipient or subrecipient is not required to account ~~to the Federal Government~~ for actual costs incurred.

(b) *Federal contract.* ~~Where a~~ Federal contract awarded to a ~~non-Federal entity~~ recipient is subject to the Cost Accounting Standards (CAS), ~~it incorporates~~. It must incorporate the applicable CAS ~~clauses, Standards, and CAS administration~~ requirements per ~~the~~ 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). ~~CAS applies directly~~ With respect to the ~~CAS-covered contract and allocation of costs~~, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 ~~take~~ take precedence over the cost principles in ~~this~~ subpart E ~~with respect to the allocation of costs~~. When a contract with a ~~non-Federal entity~~ recipient is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (~~e.g., for example~~, CAS 414— - 48 CFR 9904.414; - Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417— - 48 CFR 9904.417; - Cost of Money as an Element of the Cost of Capital Assets Under Construction), ~~apply rather~~ instead of the allowability provisions of § 200.449-). For example, the allowability of costs in CAS-covered costs is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the ~~non-Federal entity's~~ recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for ~~other~~ Federal awards and ~~other cost objectives under the~~ CAS-covered ~~contract still~~ contracts

## Unofficial Comparison Version

must be consistent with ~~it~~the cost accounting practices for the CAS-covered contracts. ~~In all cases,~~The recipient must maintain only one set of accounting records ~~needs to be maintained for~~supporting the allocation of costs ~~by~~if the ~~non~~-recipient administers both Federal ~~entity~~awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit ~~entities for purpose~~organizations in terms of the applicability of cost principles. ~~Such~~These nonprofit organizations must operate under Federal cost principles ~~applicable~~that apply to for-profit ~~entities~~organizations located at 48 CFR 31.2. ~~A listing~~Appendix VIII contains a list of these nonprofit organizations ~~is contained in appendix VIII to this part.~~ Other organizations, ~~as may be added to this list if approved by the cognizant agency for indirect costs,~~may be added from time to time.

### Basic Considerations

#### § 200.402 Composition of costs.

~~Total cost.~~The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs ~~less~~minus any applicable credits.

#### § 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following ~~general~~ criteria ~~in order~~to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.



## Unofficial Comparison Version

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the ~~non-Federal entity~~ recipient or subrecipient.

(d) Be accorded consistent treatment. ~~A~~For example, a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for ~~state~~State and local governments and Indian ~~tribes~~Tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing ~~or matching~~ requirements of any other federally-financed program in either the current or a prior period. See ~~also~~ § 200.306(b).

(g) Be adequately documented. See ~~also~~ §§ 200.300 through 200.309 ~~of this part~~.

(h) ~~Cost~~Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. ~~All other costs~~ must be incurred during the approved budget period. ~~The~~At its discretion, the Federal ~~awarding~~ agency is authorized, ~~at its discretion~~, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods ~~pursuant to~~. See § 200.308(eg)(3).

### § 200.404 Reasonable costs.

A cost is reasonable if, ~~in its nature and amount~~, it does not exceed an amount that ~~which would be incurred by~~ a prudent person would incur under the circumstances prevailing ~~at the time~~when the decision was made to incur the cost. ~~The question of reasonableness is particularly~~

## Unofficial Comparison Version

~~important when the non-Federal entity is predominantly federally funded.~~ In determining the reasonableness of a given cost, consideration must be given to: ~~the following:~~

(a) Whether the cost is ~~of a type~~ generally recognized as ordinary and necessary for the recipient's or subrecipient's operation ~~of the non-Federal entity~~ or the proper and efficient performance of the Federal award;

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, ~~state~~State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable ~~goods or services~~costs for the geographic area; and

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the ~~non-Federal entity~~recipient or subrecipient, its employees, ~~where applicable~~its students or membership, (if applicable), the public at large, and the Federal Government.

(e) ~~Whether~~The degree to which the ~~non-Federal entity significantly deviates~~cost represents a deviation from ~~its~~the recipient's or subrecipient's established ~~practices and~~written policies ~~regarding the incurrence of~~and procedures for incurring costs, ~~which may unjustifiably increase the Federal award's cost.~~

### § 200.405 Allocable costs.

(a) A cost is allocable to a ~~particular~~Federal award ~~or other cost objective~~if the ~~goods or services involved are chargeable or~~cost is assignable to that Federal award ~~or cost objective~~in accordance with ~~the~~ relative benefits received. This standard is met if the cost: ~~satisfies any of~~ the following criteria:

## Unofficial Comparison Version

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the ~~non-Federal entity~~ recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods; ~~and/or~~

(3) Is necessary to the overall operation of the ~~non-Federal entity~~ recipient or subrecipient and is assignable in part to the Federal award in accordance with ~~these~~ cost principles ~~in this subpart.~~

(b) All activities which benefit from the ~~non-Federal entity's~~ recipient's or subrecipient's indirect (~~F&A~~) cost, including unallowable activities and donated services by the ~~non-Federal entity~~ recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) ~~Any~~ cost allocable to a particular Federal award ~~under the principles provided for in this part~~ may not be charged to other Federal awards (~~for example, to overcome fund deficiencies; or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards, or for other reasons.~~). However, this prohibition would not preclude the ~~non-Federal entity~~ recipient or subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) *Direct cost allocation principles*. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. ~~If a cost benefits two or more projects or activities in~~ However, when those proportions ~~that~~ cannot be determined because of the interrelationship

## Unofficial Comparison Version

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 §§ 200.310 through 200.316 and 200.439.

(e) ~~If the contract is~~ Costs of contracts subject to CAS, ~~costs~~ must be allocated ~~to the contract pursuant~~ according to the Cost Accounting Standards. ~~To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes, which take~~ precedence over the allocation provisions in this part.

### § 200.406 Applicable credits.

(a) Applicable credits refer to ~~those receipts or reduction of expenditure type~~ transactions that offset or reduce ~~expense items~~ direct or indirect costs allocable to ~~the~~ Federal award ~~as direct or indirect (F&A) costs.~~ Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, ~~and~~ adjustments of overpayments, or erroneous charges. To the extent that such credits accruing to or received by the ~~non-Federal entity~~ recipient or subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the ~~non-Federal entity~~ recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing ~~or matching~~ requirements) must be recognized in determining

the rates or amounts to be charged to the Federal award. ~~(See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)~~ areas.

**§ 200.407 Prior written approval (prior approval).**

~~Under any given Federal award, the~~The reasonableness and allocability of certain ~~items of costs under Federal awards~~ may be difficult to determine. ~~In order to~~To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the ~~non-Federal entity~~recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs ~~or~~) before incurring the ~~Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement~~cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that ~~element,~~cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections ~~of this part~~:

~~(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);~~

~~(b) § 200.306 Cost sharing or matching;~~

~~(c) § 200.307 Program income;~~

~~(d) § 200.308 Revision of budget and program plans;~~

~~(e) § 200.311 Real property;~~

~~(f) § 200.313 Equipment;~~

~~(g) § 200.333 Fixed amount subawards;~~

~~(h) § 200.413 Direct costs, paragraph (c);~~

## Unofficial Comparison Version

- ~~(ie)~~ § 200.430 Compensation— - personal services, paragraph (h);
- ~~(jf)~~ § 200.431 Compensation— - fringe benefits;
- ~~(k)~~ § 200.438 Entertainment costs;
- ~~(lg)~~ § 200.439 Equipment and other capital expenditures;
- ~~(m)~~ § 200.440 Exchange rates;
- ~~(nh)~~ § 200.441 Fines, penalties, damages and other settlements;
- ~~(oi)~~ § 200.442 Fund raising and investment management costs;
- ~~(pj)~~ § 200.445 Goods or services for personal use;
- ~~(qk)~~ § 200.447 Insurance and indemnification;
- ~~(r)~~ § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (e);
- ~~(s)~~ § 200.455 Organization costs;
- ~~(t)~~ § 200.456 Participant support costs;
- ~~(um)~~ § 200.458 Pre-award costs;
- ~~(vn)~~ § 200.462 Rearrangement and reconversion costs;
- ~~(w)~~ § 200.467 Selling and marketing costs;
- ~~(x)~~ § 200.470 Taxes (including Value Added Tax); and
- ~~(yo)~~ § 200.475 Travel costs.

### § 200.408 Limitation on allowance of costs.

~~The Federal award may be subject to statutory~~ Statutory requirements ~~that may~~ limit the allowability of costs. ~~When~~ Any costs that exceed the maximum amount ~~allowable under a~~ limitation is less than the total amount determined in accordance with the principles in this part,

~~the amount not recoverable under the Federal award~~ allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

**§ 200.409 Special considerations.**

~~In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles~~ Other sections in this part describe special considerations and requirements applicable to states, local governments, Indian ~~tribes~~ Tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of ~~non-Federal entities~~ recipients and subrecipients, as specified in the following sections:

- (a) Direct and Indirect ~~(F&A)~~ Costs (§§ 200.412–200.415) ~~of this subpart;~~;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) ~~of this subpart;~~; and
- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) ~~of this subpart.~~

**§ 200.410 Collection of unallowable costs.**

Payments made for costs determined to be unallowable by either the ~~Federal~~ awarding Federal agency, cognizant agency for indirect costs, or pass-through entity, ~~either as direct or indirect costs~~, must be refunded ~~(including with interest)~~ to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions ~~from~~ provided by the Federal agency or pass-through entity that ~~determined the costs are unallowable unless Federal statute or regulation directs otherwise.~~ made the allowability determination. See ~~also~~ §§ 200.300 through 200.309 ~~in subpart D of this part.~~, and §200.346.

**§ 200.411 Adjustment of previously negotiated indirect ~~(F&A)~~ cost rates containing unallowable costs.**

(a) ~~Negotiated~~ Federal negotiated indirect ~~(F&A)~~ cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are ~~designed~~ intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds ~~will~~ must be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the ~~non-Federal entity~~ recipient or subrecipient, the unallowable costs ~~will~~ must be removed from the indirect ~~(F&A)~~ cost pools and the rates ~~appropriately~~ must be adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs ~~will~~ must be computed for each year involved, and a cash refund (including interest ~~chargeable in accordance with applicable regulations~~) ~~will~~ must be made to the Federal Government. ~~If in accordance with the directions provided by the cognizant agency for indirect costs. When~~ cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments ~~will~~ must be made when the rates are finalized to avoid duplicate recovery of the unallowable costs ~~by the Federal Government~~.



## Unofficial Comparison Version

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

### Direct and Indirect ~~(F&A)~~ Costs

#### § 200.412 Classification of costs.

There is no universal rule for classifying certain costs as ~~either~~ direct or indirect ~~(F&A)~~ ~~under every accounting system costs~~. A cost may be direct ~~with respect to~~ for some specific service or function, but indirect ~~with respect to~~ for the Federal award or other final cost objective. Therefore, ~~it is essential that~~ each ~~item of~~ cost incurred for the same purpose ~~in like circumstances must~~ be treated consistently ~~in like circumstances~~ either as a direct or an indirect ~~(F&A) cost in order~~ to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect ~~(F&A)~~ costs charged to Federal awards are provided in this subpart.

#### § 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of

## Unofficial Comparison Version

accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as ~~either~~ direct or indirect ~~(F&A)~~ costs. See ~~also~~ § 200.405.

(b) *Application to Federal awards.* ~~Identification~~ The association of costs with ~~the~~ Federal award (rather than the nature of the ~~goods and services involved is the determining factor in distinguishing~~ procurement transaction) determines whether costs are direct ~~from~~ or indirect ~~(F&A) costs of Federal awards. Typical costs.~~ 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~~ typically incurred specifically for ~~the~~ that Federal award. ~~If directly related~~ (including, for example, supplies needed to ~~achieve~~ the award's objectives and the proportion of staff salary expended in relation to that specific award, ~~certain~~). However, costs that otherwise would be treated as indirect costs may also be considered direct costs. ~~Examples include~~ if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, ~~cybersecurity, integrated data systems, asset management systems, performance management costs,~~ program evaluation costs, or other institutional service operations).

(c) ~~The salaries of administrative~~ Administrative and clerical staff salaries should normally be treated as indirect ~~(F&A)~~ costs. Direct charging of these costs may be appropriate only if ~~they meet~~ all of the following conditions ~~are met~~:

(1) ~~Administrative~~ The administrative or clerical services are integral to a ~~project or activity;~~ Federal award;

## Unofficial Comparison Version

(2) Individuals involved can be specifically identified with ~~the project or activity~~; a Federal award; and

~~(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and~~

~~(4)~~(3) The costs are not also recovered as indirect costs.

(d) *Minor items.* ~~Any~~A minor direct cost ~~of minor amount~~ may be treated as an indirect (F&A) cost ~~for reasons of practicality where such accounting treatment for that item of cost when it is practical to do so and provided that it is treated consistently applied to~~ for all Federal and non-Federal ~~cost objectives~~ purposes.

(e) ~~The~~Unallowable costs ~~of certain activities are not allowable as charges to~~ Federal awards. ~~However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless~~ must be treated as direct costs ~~for purposes of when~~ determining indirect (F&A) cost rates ~~and~~. Additionally, unallowable costs must be allocated their equitable share of the ~~non-Federal entity's~~recipient's or subrecipient's indirect costs if they represent activities which:

(1) Include the salaries of personnel~~;~~;

(2) Occupy space~~;~~; and

(3) Benefit from the ~~non-Federal entity's~~recipient's or subrecipient's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the ~~non-Federal entity~~nonprofit organization primarily as a service to members, clients, or the general public when significant and necessary to the ~~non-Federal entity's~~organization's mission must be treated

## Unofficial Comparison Version

as direct costs whether or not allowable, and be allocated an equitable share of indirect ~~(F&A)~~ costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions.

See ~~also~~ § 200.454.

(2) Providing services and information to members, ~~legislative or administrative bodies~~ the government, or the public. See ~~also~~ §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See ~~also~~ §§ 200.421 and 200.450.

(4) Conferences ~~(except those held to conduct in support of the general administration of the non-Federal entity-recipient or subrecipient)~~. See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in ~~the recipient's or subrecipient's operation of the non-Federal entity~~. See also § 200.442.

(6) ~~Administration of group~~ Group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

### § 200.414 Indirect ~~(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~~ improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures

## Unofficial Comparison Version

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 Appendix III to this part, 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.

(b) *Diversity of nonprofit organizations.* ~~Because of the diverse characteristics and accounting practices of nonprofit organizations, it~~ It is not always possible to specify the types of ~~cost which~~ costs that may be classified as indirect ~~(F&A) cost in all situations.~~ costs for nonprofit organizations due to the diversity of their accounting practices. Identification with a Federal award rather than the nature of the ~~goods and services procurement transaction~~ involved is the determining factor in distinguishing direct from indirect ~~(F&A)~~ costs of Federal awards. However, typical examples of indirect ~~(F&A)~~ cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See ~~also~~ § 200.306.)

(1) ~~The negotiated~~ Negotiated indirect cost rates must be accepted by all Federal ~~awarding~~ agencies. A Federal ~~awarding~~ agency may only use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award ~~only~~ when required by Federal statute

## Unofficial Comparison Version

~~or~~, regulation, or when approved by ~~the awarding~~ Federal ~~awarding~~ agency ~~head or delegate~~ based on documented justification ~~as described in paragraph (c)(3) of this section~~).

(2) The Federal ~~awarding~~ agency ~~head or delegate~~ must notify OMB of any approved deviations. ~~The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.~~

(3) The Federal ~~awarding~~ agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) ~~As required under § 200.204, the~~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) ~~in the notice of this section~~ funding opportunity. As appropriate, the Federal agency should incorporate discussion of these policies into ~~Federal awarding agency~~its outreach activities with ~~non-Federal entities prior to the applicants before~~ posting ~~of~~ a notice of funding opportunity. See § 200.204.

(d) Pass-through entities are subject to the requirements in § 200.332(ab)(4) ~~and must accept all federally negotiated indirect costs rates for subrecipients.~~

(e) Requirements for development and submission of indirect ~~(F&A)~~ cost rate proposals and cost allocation plans are contained in ~~the following~~ Appendices ~~III VII and Appendix IX as follows:~~

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

## Unofficial Comparison Version

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

(3) Appendix V to Part 200— - State/Local ~~Governmentwide~~Government-wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200— - Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200— - States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200— - Hospital Cost Principles.

(f) ~~In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity~~Recipients and subrecipients that ~~does~~do not have a current Federal negotiated indirect cost rate (including provisional) ~~rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, rate~~) may elect to charge a de minimis rate of ~~10%~~up to 15 percent of modified total direct costs (MTDC) ~~which may be used indefinitely. No documentation is required to justify the 10%~~). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies may not require recipients and subrecipients to use a de minimis ~~indirect cost rate. As described in § 200.403,~~ rate lower than this standard unless required by Federal statute. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate and may submit an indirect cost proposal in accordance with the appropriate Appendix referenced in paragraph (e). When applying the de minimis rate, costs must be consistently charged as either ~~indirect or direct or indirect costs, but~~ and may not be double charged or inconsistently charged

## Unofficial Comparison Version

as both. ~~If chosen, this methodology once elected must be used consistently~~The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until ~~such time as a non-Federal entity~~the recipient or subrecipient chooses to ~~negotiate for~~receive a rate, which the ~~non-Federal entity may apply to do at any time.~~

~~(g) Any non-~~negotiated rate. A governmental department or agency that receives more than \$35 million in direct Federal ~~entity that has~~ funding during its fiscal year may not elect to use the de minimis rate (see Appendix VII, paragraph D.1.b.).

~~(g) A recipient or subrecipient with a current federally-~~Federal negotiated indirect cost rate may apply for a one-time extension of ~~the rates in~~ that agreement for ~~a period of~~ up to four years. This extension will be subject to ~~the~~ review and approval ~~of~~by the cognizant agency for indirect costs. If ~~an extension is~~ granted, the ~~non-Federal entity~~recipient or subrecipient may ~~not only~~ request a rate review ~~until~~when the extension period ends. ~~At the end of the 4 year extension, the non-Federal entity~~The recipient or subrecipient must re-apply to negotiate a new rate. ~~Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each-~~ when the extension request.

~~(h) The federally-~~ends. When a new rate is negotiated ~~indirect rate, distribution base, and rate type,~~ the recipient or subrecipient may again apply for a ~~non-Federal entity (except for the Indian tribes or tribal organizations, as defined~~ one-time extension of the new rate in ~~the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1))~~ must be available ~~publicly on an OMB designated Federal website~~ accordance with this paragraph.

### § 200.415 Required **financial** certifications.



## Unofficial Comparison Version

~~Required certifications include:~~

~~(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal-~~ (a) ~~Financial reports or vouchers requesting and payment requests under the agreements~~ Federal awards must include a certification, signed by an official who is authorized to legally bind the ~~non-Federal entity recipient or subrecipient~~, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729—3730 and 3801—3812).”

~~(b) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting reports: “I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.” Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.~~

(c) Certification of cost allocation plan or indirect ~~(F&A)~~ cost rate proposal. Each cost allocation plan or indirect ~~(F&A)~~ cost rate proposal must comply with the following:

## Unofficial Comparison Version

(1) A proposal to establish a cost allocation plan or an indirect ~~(F&A)~~ cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the ~~non-Federal entity~~ recipient, must be certified by the ~~non-Federal entity~~ recipient using the *Certificate of Cost Allocation Plan* or *Certificate of Indirect Costs* as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the ~~non-Federal entity~~ recipient by an individual at a level no lower than ~~the~~ vice president or chief financial officer of the ~~non-Federal entity~~ recipient that submits the proposal.

(2) ~~Unless the non-Federal entity has elected the option under § 200.414(f), the~~ The Federal Government may either disallow all indirect ~~(F&A)~~ costs or unilaterally establish ~~such a plan or an indirect cost rate~~ when the ~~non-Federal entity~~ recipient fails to submit a certified proposal for establishing ~~such a plan or a rate in accordance with the requirements. Such a plan or~~ ~~or~~. This rate ~~may~~ should be based upon audited historical data or ~~such other data that have been~~ furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. ~~When a cost allocation plan or indirect cost rate~~ The rate ~~is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to~~ must ensure that potentially unallowable costs ~~will~~ are not ~~be~~ reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

~~(e) Certifications by nonprofit~~ (d) Nonprofit organizations ~~as appropriate~~ must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a)-, if applicable.

~~(d) See also § 200.450 for another required certification.~~

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its annual indirect cost rate proposal.

### Special Considerations for States, Local Governments and Indian Tribes

#### § 200.416 Cost allocation plans and indirect cost proposals.

(a) ~~For Awards to states, local governments, and Indian tribes, certain services, Tribes are~~ often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such ~~as~~ department to claim a portion of centralized service costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting, ~~etc., are provided to operating agencies on a centralized basis.~~ Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan ~~provides that~~ establishes this process.

(b) Individual ~~operating agencies (governmental department or agency),~~ ~~normally~~ departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating ~~agency~~ department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each ~~operating~~ department ~~or agency~~ of the ~~governmental unit~~ State, local government, or Indian Tribe carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

## Unofficial Comparison Version

(c) The requirements for ~~development~~developing and ~~submission of~~submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in ~~appendices~~Appendices V, VI, and VII ~~to this part~~.

### § 200.417 Interagency service.

~~The cost of services provided by one agency to another within the governmental unit~~An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost ~~allowance~~rate equal to ~~ten~~10 percent of the direct ~~salaries~~salaries and ~~wage cost of~~wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used ~~in~~ ~~lieu~~instead of determining the actual indirect costs of the service. These services do not include centralized services ~~that are~~ included in central service cost allocation plans ~~as~~ described in Appendix V ~~to Part 200~~.

### Special Considerations for Institutions of Higher Education

#### § 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a ~~state~~State or local government on behalf of ~~and in direct benefit to~~ its IHEs ~~for~~are allowable. These costs include but are not limited to fringe benefit programs, such as pension costs and Federal Insurance Contributions Act (FICA ~~and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable~~) costs ~~of such IHEs~~. These costs are allowable regardless of whether or not ~~these costs~~they are recorded in the accounting records of the institutions, subject to the following conditions:

- (a) The costs meet the requirements of § 200.402 ~~-- 200.411 of this subpart;~~

## Unofficial Comparison Version

(b) The costs are properly supported by approved cost allocation plans in accordance with the applicable ~~Federal~~ cost accounting principles ~~in~~of this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

### **§ 200.419 Cost accounting standards ~~and disclosure statement.~~**

~~(a)~~ An IHE that receive an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

~~(b) Disclosure statement. An IHE that receives an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards and instruments.~~

~~(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 indirect (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~~

## Unofficial Comparison Version

~~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 part 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.~~

~~(3) Cost and funding adjustments. Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS-covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.~~

## Unofficial Comparison Version

~~(4) Overpayments. Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.~~

~~(5) Compliant cost accounting practice changes. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.~~

~~(6) Responsibilities. The cognizant agency for indirect cost must:~~

~~(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.~~

~~(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.~~

~~(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.~~

### **General Provisions for Selected Items of Cost**

**§ 200.420 Considerations for selected items of cost.**

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of ~~Subtitlesubtitle~~ II of this subpart. These principles apply whether or not a particular ~~cost~~ item ~~of cost~~ is properly treated as a direct ~~cost~~ or indirect (~~F&A~~) cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable; rather, ~~determination as to~~. When determining the allowability ~~in~~ for an item of cost, each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. ~~See also § 200.102.~~

**§ 200.421 Advertising and public relations.**

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media ~~include~~ includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals; ~~and the like.~~

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the ~~non-Federal entity~~ recipient or subrecipient for the performance of a Federal award (See also § 200.463);



## Unofficial Comparison Version

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when ~~non-Federal entities are the recipient or subrecipient is~~ reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the ~~requirements of the Federal award~~ requirements.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the ~~recipient’s or subrecipient’s image of the non-Federal entity~~ or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press ~~pertaining to about~~ specific activities or accomplishments which result from ~~the~~ performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities; ~~or financial matters, etc.~~

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

## Unofficial Comparison Version

(2) Costs of meetings, conventions, ~~conventions~~conferences, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, ~~including models, gifts, and souvenirs;~~

(4) Costs of advertising and public relations designed solely to promote the ~~non-Federal entity~~recipient or subrecipient.

### § 200.422 Advisory councils.

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal ~~awarding~~agency, or as an indirect cost where allocable to Federal awards. See § 200.444, ~~applicable~~which applies to States, local governments, and Indian ~~tribes~~Tribes.

### § 200.423 Alcoholic beverages.

~~Costs~~The cost of alcoholic beverages ~~are~~is unallowable.

### § 200.424 Alumni/~~ae~~ activities.

Costs incurred by IHEs for, or in support of, alumni/~~ae~~ activities are unallowable.

### § 200.425 ~~Audit services~~Audits conducted in accordance with the Single Audit Act.

## Unofficial Comparison Version

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501—7507), ~~as implemented by and the~~ requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs ~~when for audits that are not required by and performed in accordance with the Single Audit Act, and subpart F the requirements of this part have not been conducted or have been conducted but not in accordance therewith; and;~~ and

(2) Any costs of auditing a ~~non-Federal entity that is exempt~~ recipient or subrecipient exempt from having an audit conducted under the Single Audit Act and ~~subpart F the requirements of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.~~

(b) The costs of a financial statement audit of a ~~non-Federal entity~~ recipient or subrecipient that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of *agreed-upon-procedures engagements* to monitor subrecipients (in accordance with ~~subpart D, §§ 200.331—333) who are exempt~~ exempt from ~~the requirements of having an audit conducted under the Single Audit Act and subpart F the requirements~~ of this part. This cost is allowable only if the ~~agreed-upon-~~ procedures engagements are:

(1) Conducted in accordance with GAGAS ~~or applicable international~~ attestation standards, ~~as appropriate;~~

(2) Paid for and arranged by the pass-through entity; and

## Unofficial Comparison Version

(3) Limited in scope to one or more of the following ~~types of~~ compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

### § 200.426 Bad debts.

Bad debts (debts ~~which have been~~ determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts ~~after they have been determined to be uncollectable~~ are also unallowable. See ~~also~~ § 200.428.

### § 200.427 Bonding costs.

(a) Bonding costs arise when the Federal ~~awarding~~ agency requires assurance against financial loss to itself or others ~~by reason because~~ of ~~the an~~ act or default of the ~~non-Federal entity-recipient~~. They also arise ~~also in instances where the non-Federal entity~~ when the recipient requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) ~~Costs of bonding~~ Bonding costs required ~~pursuant to~~ under the Federal award's terms and conditions ~~of the Federal award~~ are allowable.

(c) ~~Costs of bonding~~ Bonding costs required by the ~~non-Federal entity~~ recipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

### § 200.428 Collections of improper payments.

The costs incurred by a ~~non-Federal entity~~ recipient or subrecipient to recover improper payments, ~~including improper overpayments~~, are allowable as either direct or indirect costs, as

appropriate. ~~Amounts~~The recipient or subrecipient may use the amounts collected ~~may be used by the non-Federal entity~~ in accordance with cash management standards ~~set forth~~described in § 200.305.

**§ 200.429 Commencement and convocation costs.**

For IHEs, costs incurred for commencements and convocations are unallowable, except as **activity costs** provided for in **Appendix III, (B)(9) Student Administration and Services,**~~in appendix III to this part, as activity costs.~~

**§ 200.430 Compensation— - personal services.**

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits ~~which are~~ addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the ~~non-Federal entity~~recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with ~~a non-Federal entity's~~the recipient's or subrecipient's laws ~~and/or~~, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph ~~(i)~~(g) of this section, when applicable.

## Unofficial Comparison Version

(b) *Reasonableness*. Compensation for employees engaged in work on Federal awards will be ~~considered~~ reasonable to the extent that it is consistent with that paid for similar work in other activities of the ~~non-Federal entity recipient or subrecipient~~. In cases where the kinds of employees required for Federal awards are not found in the ~~other~~ different activities of the ~~non-Federal entity recipient or subrecipient~~, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the ~~non-Federal entity recipient or subrecipient~~ competes for the kind of employees involved.

(c) *Professional activities outside the non-recipient or subrecipient*. ~~Unless the Federal entity. Unless agency expressly authorizes an arrangement is specifically authorized by, a Federal awarding agency, a non-Federal entity recipient or subrecipient must follow its written non-Federal entity wide policies and practices procedures concerning the permissible extent of professional services that can be provided outside the non-Federal entity recipient or subrecipient for non-organizational compensation. Where such non-Federal entity wide the recipient or subrecipient does not have written policies do not exist or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the recipient or subrecipient to allocate the effort of professional staff working on Federal awards be allocated~~ between:

- (1) ~~Non-Federal entity~~ Recipient or subrecipient activities, and
- (2) Non-organizational professional activities. ~~If~~ Appropriate arrangements governing compensation must be negotiated on a case-by-case basis if the Federal ~~awarding~~ agency considers the extent of non-organizational professional effort excessive or inconsistent with the

## Unofficial Comparison Version

conflicts-of-interest terms and conditions of the Federal award, ~~appropriate arrangements governing compensation will be negotiated on a case-by-case basis.~~

(d) *Unallowable costs.*

(1) Costs ~~which are~~ unallowable under other sections of these principles must not be allowable under this section solely ~~on the basis that~~ because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. ~~For the amount of~~ See 10 U.S.C. 2324(e)(1)(P), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling ~~for cost reimbursement contracts, the amount,~~ covered compensation subject to the ceiling, ~~the~~ covered employees, and other relevant provisions, ~~see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other~~ for cost-reimbursement contracts. For different types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a ~~non-Federal entity's~~ recipient's or subrecipient's compensation policy resulting in a substantial increase in its ~~employees'~~ employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, ~~or~~ efficient performance, suggestion awards, or safety awards, ~~etc.~~, is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued ~~pursuant~~ according to an agreement entered into in good faith between the ~~non-Federal~~

## Unofficial Comparison Version

~~entity~~recipient or subrecipient and the employees before the services were rendered, or ~~pursuant~~according to an established plan followed by the ~~non-Federal~~entityrecipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Standards for Documentation of Personnel Expenses*

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

- (i) Be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- (ii) Be incorporated into the official records of the recipient or subrecipient;
- (iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);
- (iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;
- (v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) for treatment of incidental work for IHEs.); and
- (vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.



## Unofficial Comparison Version

(vii) Budget estimates (meaning, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuation between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated based on actual work performed.

(viii) Because practices vary as to the activity constituting a full workload (for example, IBS for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages are charged to Federal awards.

## Unofficial Comparison Version

(2) For records that meet the standards required in paragraph (g)(1), the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(3).

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards, including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

## Unofficial Comparison Version

### (C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors and clerical and support staff, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance when these are clearly documented. These plans are acceptable as an alternative to paragraph (g)(1) requirements when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

## Unofficial Comparison Version

(8) For a recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that ~~such~~the compensation is reasonable for the actual personal services rendered rather than a distribution of earnings ~~in excess of above~~ actual costs. ~~This~~Compensation may include director's and executive committee member's fees, incentive awards, ~~allowances for~~ off-site ~~pay,~~ or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(hi) *Institutions of Higher Education (IHEs).* This paragraph provides guidance specific to only IHEs.

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, ~~ete-),etcetera~~), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

## Unofficial Comparison Version

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under ~~the~~ written institutional policy (at a rate not to exceed institutional base salary) ~~do not need ~~not~~ to be included in the records described in paragraph (i) of this section to directly~~ to charge payments of incidental activities ~~directly~~, such activities must either be ~~specifically provided for~~ expressly authorized in the Federal award budget or receive prior written approval by the Federal ~~awarding~~ agency.

(2) *Salary basis*. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the ~~institutional base salary (IBS)~~ rate. Except as noted in paragraph ~~(hi)(1)(ii) of this section,~~ in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of ~~the~~ faculty at an institution. IBS is ~~defined as~~ the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income ~~that~~ an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal ~~awarding~~ agency, charges of a faculty member's salary to a Federal award ~~must~~ may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the ~~Federal~~ award.

(3) *Intra-Institution of Higher Education (IHE) consulting*. Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty ~~member~~ members is in addition to ~~his or her~~ their regular responsibilities, any charges for such work representing

## Unofficial Comparison Version

additional compensation above IBS are allowable provided that such consulting arrangements are ~~specifically provided for~~ expressly authorized in the Federal award or approved in writing by the Federal ~~awarding~~ agency.

(4) Extra Service Pay ~~normally~~ typically represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay ~~is a result of results from~~ Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The ~~non-Federal entity~~ IHE establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The ~~non-Federal entity~~ IHE establishes a consistent written definition of work covered by IBS, which is specific enough to determine conclusively when work beyond that level has occurred. This ~~definition~~ may be described in appointment letters or other ~~documentations.~~ documentation.

(iii) The supplementation amount paid is commensurate with the IBS ~~pay rate~~ of pay and ~~the amount of~~ additional work performed. See paragraph ~~(h)(2) of this section.~~.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the ~~non-Federal entity~~ IHE.

(v) The total salaries charged to Federal awards, including extra service ~~pay~~ payments, are subject to the ~~Standards~~ standards of ~~Documentation~~ documentation as described in paragraph ~~(i) of this section.~~ g).

(5) *Periods outside the academic year.*

## Unofficial Comparison Version

(i) Except as specified for teaching activity in paragraph ~~(hi)(5)(ii) of this section~~, charges for work performed by faculty members on Federal awards during periods not included in the base salary period ~~will~~ must be at a rate not ~~in excess of more than~~ the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period ~~will~~ must be based on the ~~normal~~ written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty*. Charges for work performed on Federal awards by faculty members having only part-time appointments ~~will~~ must be determined at a rate not ~~in excess of more than~~ that regularly paid for part-time assignments.

(7) *Sabbatical leave costs*. Rules for sabbatical leave are as ~~follow~~ follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable, provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research.

~~Such~~ These costs ~~will~~ must be allocated ~~on an equitable basis~~ equitably among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits ~~for which a cost is determined for assessment~~ as a direct charge, the aggregate amount of ~~such~~ assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's ~~actual~~ experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members*. Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the ~~non-Federal entity's~~ recipient's written policy and ~~consistent with~~ paragraph ~~(hi)(1)(i) of this section~~.

## Unofficial Comparison Version

### ~~(i) Standards for Documentation of Personnel Expenses~~

~~(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:~~

~~(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;~~

~~(ii) Be incorporated into the official records of the non-Federal entity;~~

~~(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);~~

~~(iv) Encompass federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;~~

~~(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and~~

~~(vi) [Reserved]~~

~~(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.~~



## Unofficial Comparison Version

~~(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:~~

~~(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;~~

~~(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and~~

~~(C) The non-Federal entity's system of internal controls includes processes to review after the fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.~~

~~(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.~~

~~(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.~~

## Unofficial Comparison Version

~~(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.~~

~~(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.~~

~~(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.~~

~~(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.~~

~~(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:~~

~~(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;~~

## Unofficial Comparison Version

~~(B) The entire time period involved must be covered by the sample; and~~

~~(C) The results must be statistically valid and applied to the period being sampled.~~

~~(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.~~

~~(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.~~

~~(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.~~

~~(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.~~

~~(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.~~

**§ 200.431 Compensation— - fringe benefits.**

(a) *General.* Fringe benefits are allowances and services ~~provided by~~ employers provide to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick, or military), employee insurance, pensions, and unemployment ~~benefit plans~~benefits. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, ~~non-Federal entity~~an organization-employee agreement, or an established policy of the ~~non-Federal entity~~recipient or subrecipient.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards;

and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the ~~non-Federal entity~~recipient or subrecipient or a specified grouping of employees.

## Unofficial Comparison Version

(i) When a ~~non-Federal entity~~ recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment~~– and must be allocated as a general administrative expense to all activities. These costs may be included in fringe benefit rates with the approval of the cognizant agency for indirect costs.~~

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a ~~non-Federal entity~~ recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and ~~worker's~~ 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~~ permitted under established written policies. ~~Such~~ The recipient or subrecipient must allocate fringe 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~~ following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* ~~Fringe~~ The recipient or subrecipient may assign fringe benefits~~–may be assigned~~ to cost objectives by identifying specific benefits to specific individual employees or

## Unofficial Comparison Version

by allocating ~~them based 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 recipient or subrecipient~~ demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance*. See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation; and the types of coverage, ~~the~~ extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) ~~Costs of insurance~~ Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The ~~costs~~ cost of such insurance ~~is~~ ~~unallowable~~ when the ~~non-Federal entity recipient or subrecipient~~ 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., for example,~~ post-retirement health benefits;) are allowable in the year of payment provided that the ~~non-Federal entity recipient or subrecipient~~ follows a consistent costing policy.

## Unofficial Comparison Version

(f) *Automobiles.* That portion of automobile costs furnished by the ~~non-Federal entity~~ recipient or subrecipient that relates to personal use by employees (including transportation to and from work) is unallowable as a 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 ~~written~~ policies of the ~~non-Federal entity~~ recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) ~~Except for State and Local Governments, the~~ The cost assigned to each fiscal year should be determined in accordance with GAAP~~-, except for State and local governments.~~

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. ~~Non-Federal entity~~ The recipient or subrecipient may ~~elect to~~ follow the “Cost Accounting Standard for Composition and Measurement of Pension Costs” (48 CFR 9904.412).

(5) ~~Pension~~ Premiums for pension plan termination insurance ~~premiums~~ that are paid ~~pursuant~~ according to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301—1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

## Unofficial Comparison Version

(6) Pension plan costs may be computed using a pay-as-you-go method or an ~~acceptable~~ actuarial cost method ~~in accordance with~~ recognized by GAAP and following the recipient's or subrecipient's 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 ~~method recognized by GAAP~~ are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient or subrecipient in excess of the costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.



## Unofficial Comparison Version

(v) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are related to compensation not allocable to that award. In all cases, the payments for unfunded pension costs may not exceed the contribution rate of the employee's current pension costs. Payments for unfunded pension costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded pension costs are re-amortized.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

~~-based~~(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that

## Unofficial Comparison Version

year. Costs funded after ~~the six-month period~~ months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension ~~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 recipient's or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of subrecipient's 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 fund. =~~

## Unofficial Comparison Version

~~(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 the current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded by the recipient or subrecipient in excess of the ~~actuarially determined amount~~ costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the ~~non-Federal entity~~ recipient's or subrecipient's contribution in a future period periods.

(4) ~~When a non-Federal entity~~ If a recipient or subrecipient establishes or 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.

## Unofficial Comparison Version

~~(5)~~ Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are related to compensation not allocable to that award. In all cases, the payments for unfunded PHRP costs may not exceed the contribution rate of the employee's current health benefit costs. Payments for unfunded PRHP costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded PHRP costs are re-amortized.

(6) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums; or

(ii) An insurer or trustee ~~that will~~ maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

~~(67)~~ The recipient or subrecipient must provide the Federal Government ~~must receive~~ an equitable share of any ~~amounts of~~ previously allowed post-retirement benefit costs (including subsequent earnings ~~thereon~~ ~~which revert or inure to the non-Federal entity in~~) that the ~~form~~ ~~recipient or subrecipient receives through~~ a refund, withdrawal, or other credit.

(i) *Severance pay.*

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by ~~non-Federal entities~~ recipients and subrecipients to

## Unofficial Comparison Version

workers whose employment is being terminated. ~~Costs of severance~~ Severance pay ~~are~~ is allowable only to the extent that, in each case, it is required by:-

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the ~~non-Federal entity's~~ recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual ~~normal turnover~~ severance payments ~~for normal turnover~~ must be allocated to all activities; or, where the ~~non-Federal entity~~ recipient or subrecipient provides for a reserve for normal severances, such method ~~will be~~ is 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~~ recipient or subrecipient.

(ii) ~~Measurement of~~ Measuring the costs of abnormal or mass severance pay by means of an accrual ~~method~~ will not achieve equity ~~for~~ for both parties. ~~Thus~~ Therefore, accruals ~~for this purpose~~ are not allowable. However, the Federal Government recognizes its responsibility to ~~participate, to the extent of~~ contribute its fair share, ~~in any~~ toward a 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~~ that are in ~~an amount in~~ excess of the ~~normal~~ standard severance pay ~~paid~~ provided by the ~~non-Federal entity~~ recipient or

## Unofficial Comparison Version

~~subrecipient~~ to an employee upon termination of employment and ~~that~~ are paid to the employee contingent upon a change in management control over, or ownership of, the ~~non-Federal entity's recipient's or subrecipient's~~ assets, are unallowable.

(4) Severance payments to foreign nationals employed by the ~~non-Federal entity recipient or subrecipient~~ outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the ~~non-Federal entity recipient or subrecipient~~ in the United States, are unallowable, unless they are ~~required by applicable foreign law or~~ necessary for the performance of Federal programs and approved by the Federal ~~awarding~~ agency.

(5) Severance payments to foreign nationals employed by the ~~non-Federal entity recipient or subrecipient~~ outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the ~~non-Federal entity recipient or subrecipient~~ in that country, are unallowable, unless they are ~~required by applicable foreign law or~~ necessary for the performance of Federal programs and approved by the Federal ~~awarding~~ agency.

(j) *For IHEs only.*

(1) Fringe benefits in the form of undergraduate and graduate tuition or ~~tuition~~ remission ~~of tuition~~ for individual employees are allowable, provided such benefits are granted in accordance with established ~~non-Federal entity written~~ policies, ~~of the IHE~~ and are distributed to all ~~non-Federal entity IHE~~ activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of ~~undergraduate and graduate~~ tuition or ~~tuition~~ remission ~~of tuition~~ for individual employees not employed by ~~IHE~~ the IHE are limited to the tax-free amount allowed ~~per section 127 of~~ by the Internal Revenue Code as amended, (26 U.S.C. 127).

## Unofficial Comparison Version

(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, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* For IHEs whose costs are paid by ~~state~~ State or local ~~governments~~ government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically ~~incurred~~ on behalf of, and in direct benefit to, the ~~non-Federal entity~~ IHE, are allowable. ~~These costs of such non-Federal entities whether or do not these costs are need to be~~ recorded in the accounting records of the ~~non-Federal entities, IHE but are~~ subject to the following:

- (1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;
- (2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
- (3) The costs are not otherwise borne directly or indirectly by the Federal Government.

### § 200.432 Conferences.

A conference ~~is defined as a meeting, retreat, seminar, symposium, workshop or means~~ an event whose primary purpose is ~~the dissemination of to disseminate~~ technical information beyond the ~~non-Federal entity~~ recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the ~~non-Federal entity~~ recipient or subrecipient as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other ~~items~~

## Unofficial Comparison Version

incidental ~~items~~ to such conferences unless further restricted by the terms and conditions of the Federal award. ~~As needed, the~~The costs of identifying, ~~but not and~~ providing, locally available dependent-care resources ~~for participants~~ are allowable ~~as needed~~. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed ~~in a manner that minimizes~~to minimize costs to the Federal award. The Federal ~~awarding~~ agency may authorize exceptions ~~where appropriate~~ for programs including Indian ~~tribes~~Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

### § 200.433 Contingency provisions.

(a) Contingency ~~is that~~provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items ~~as~~ approved by the Federal ~~awarding~~ agency) which ~~is~~are associated with possible events or conditions arising from causes ~~for which~~ the precise outcome ~~of which~~is indeterminable at the time of estimate, and that ~~experience~~ ~~shows will~~are likely to result, in the aggregate, in additional costs for the approved activity or project. ~~Amounts~~Contingency costs for major project scope changes, unforeseen risks, or extraordinary events ~~may~~are not ~~be included~~allowable.

(b) It is permissible for contingency ~~amounts~~costs other than those excluded in paragraph (a) ~~of this section~~to be explicitly included in budget estimates, to the extent ~~they are~~necessary to improve ~~the~~their precision ~~of those estimates~~. ~~Amounts~~. Contingency costs must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal ~~awarding~~ agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements ~~in~~of this part (see ~~also~~ §§ 200.300



## Unofficial Comparison Version

and 200.403 ~~of this part~~);), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the ~~non-Federal entity's~~ recipient's or subrecipient's records.

(c) Payments ~~made by the Federal awarding agency to the non-Federal entity's~~ recipient's or subrecipient's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

### § 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the ~~non-Federal entity~~ recipient or subrecipient to other entities, are unallowable.

(b) The value of services and property donated (including in-kind) to the ~~non-Federal entity~~ recipient or subrecipient may not be charged to the Federal award either as a direct or indirect ~~(F&A)~~ cost. The value of donated services and property may be used to meet cost sharing ~~or matching~~ requirements (see § 200.306). Depreciation on donated assets is permitted ~~in accordance with § 200.436, as so~~ long as the donated property is not counted towards meeting cost sharing ~~or matching~~ requirements. (see § 200.436).

(c) Services donated or volunteered to the ~~non-Federal entity~~ recipient or subrecipient may be ~~furnished to a non-Federal entity~~ provided by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award ~~either~~ as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing ~~or matching~~ requirements in accordance with the provisions of § 200.306.

## Unofficial Comparison Version

(d) To the extent feasible, services donated to the ~~non-Federal entity~~ recipient or subrecipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to ~~the~~ nonprofit organization ~~utilized and used~~ in the performance of a direct cost activity must be considered in the determination of the ~~non-Federal entity's~~ recipient's or subrecipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the ~~non-Federal entity~~ recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the ~~non-Federal entity~~ recipient or subrecipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the ~~project's~~ total costs ~~of the project~~. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing ~~or matching~~ requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

## Unofficial Comparison Version

(1) Donated personal property and use of space may be furnished to a ~~non-Federal entity-recipient or subrecipient~~. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing ~~or matching share~~ requirements ~~under the conditions~~ described in § 200.300 ~~of this part~~. The recipient or subrecipient must value ~~of the donations~~ ~~must be determined~~ in accordance with § 200.300. Where ~~the recipient or subrecipient treats~~ donations ~~are treated~~ as indirect costs, indirect cost rates ~~will~~ must separate the value of the donations so that reimbursement ~~will~~ is not ~~be~~ made.

### **§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.**

(a) *Definitions for* ~~the purposes of this section~~.

(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the ~~non-Federal entity-recipient or subrecipient~~ before, during, and after ~~the~~ commencement of a judicial or administrative proceeding; that ~~bear~~ bears a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

## Unofficial Comparison Version

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts ~~which~~that violate the False Claims Act (31 U.S.C. 3729--3732) or the Anti-kickback Act (~~4142~~ U.S.C. 1320a--7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs*.

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil, or administrative proceeding (including ~~the~~ filing of a false certification) commenced by the Federal Government, a ~~state~~State, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the ~~non-Federal entity~~recipient or subrecipient, (or commenced by third parties or a current or former employee of the ~~non-Federal entity~~recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. ~~2409~~4701 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, ~~state~~State, local or foreign statute, regulation, or the terms and conditions of the Federal award; by the ~~non-Federal entity~~recipient or subrecipient (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of ~~non-Federal entity~~recipient or subrecipient liability.

## Unofficial Comparison Version

(C) In the case of any civil or administrative proceeding, the disallowance of costs ~~or~~, the imposition of a monetary penalty, or an order issued by the Federal ~~awarding~~-agency head or delegate to the ~~non-Federal entity~~recipient or subrecipient to take corrective action under 10 U.S.C. ~~2409~~4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the ~~non-Federal entity~~recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award ~~by reason~~because of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise; if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) ~~of this section~~is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the ~~non-Federal entity~~recipient or subrecipient and the Federal Government, then the costs incurred may be allowed to the extent ~~specifically provided~~expressly authorized in ~~such~~the agreement.

(d) If a proceeding referred to in paragraph (b) ~~of this section~~is commenced by a ~~state~~State, local or foreign government, ~~then the costs incurred may be allowed if~~ the authorized Federal official ~~may allow the costs incurred if such authorized official~~determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

## Unofficial Comparison Version

(2) Specific written direction of an authorized official of the Federal ~~awarding~~ agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) ~~of this section, which~~, and are not ~~made~~ unallowable ~~by that subsection~~, may be ~~allowed but only~~ allowable to the extent that:

(1) The costs are reasonable and necessary ~~in relation to~~ for the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and ~~such~~ other factors ~~as~~ that may be appropriate. ~~Such~~ This percentage must not exceed 80 percent. ~~However, if an~~ unless the agreement ~~reached~~ under paragraph (c) ~~of this section~~ has explicitly considered this ~~80 percent~~ limitation and permitted a higher percentage, ~~then~~. ~~In that case~~, the ~~full~~ total amount of costs ~~resulting from that agreement are~~ incurred may be allowable.

(f) Costs incurred by the ~~non-Federal entity~~ recipient or subrecipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make ~~such~~ the

## Unofficial Comparison Version

employee whole, where the ~~non-Federal entity recipient or subrecipient~~ was found liable or settled, are unallowable.

(g) Costs ~~of prosecution or for prosecuting~~ claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, ~~and~~ consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs ~~which that~~ may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) ~~of this section,~~, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon a provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

### § 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The ~~non-Federal entity recipient or subrecipient~~ may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are ~~used,~~ needed ~~and used~~ in the ~~non-Federal entity's recipient's or subrecipient's~~ activities, and ~~properly~~ correctly allocated to Federal awards. ~~Such~~The compensation must be made by computing the proper depreciation.

## Unofficial Comparison Version

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the ~~non-Federal entity recipient or subrecipient~~ by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as ~~matching cost sharing~~ but not both. ~~For the computation of~~ When computing depreciation charges, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or ~~where it~~ is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the ~~non-Federal entity recipient or subrecipient~~ that ~~are~~ is already claimed as ~~matching cost sharing~~ or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award; ~~and~~.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as the type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.



## Unofficial Comparison Version

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency- ~~for indirect costs~~. The depreciation methods used to calculate the depreciation amounts for indirect ~~(F&A)cost~~ rate purposes must be the same methods used by the ~~non-Federal entity~~ recipient or subrecipient for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component ~~item~~ may ~~then~~ be depreciated over its estimated useful life- ~~in this case~~. The building components must be grouped into three general components ~~of a building~~: building shell (including construction and design costs), building services systems (~~e.g., for example~~, elevators, HVAC, ~~and plumbing system and heating and air conditioning system~~), and fixed equipment (~~e.g., for example~~, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). ~~In exceptional cases, a~~ cognizant agency ~~for indirect costs~~ may authorize a ~~non-Federal entity~~ recipient or subrecipient to use more than these three groupings- ~~in exceptional cases~~. When a ~~non-Federal entity~~ recipient or subrecipient elects to depreciate its buildings by ~~its~~ their components, the same depreciation ~~methods~~ method must be used for indirect ~~(F&A) purposes~~ and financial statements purposes, as described in paragraphs (d)(1) and (2) ~~of this section~~.

## Unofficial Comparison Version

(4) No depreciation may be allowed on ~~any~~ assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (~~i.e., meaning~~, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods ~~prior to~~ before the conversion from the use allowance method ~~as well as~~ and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) ~~Charges for depreciation must be supported by adequate~~ Adequate property records ~~must support depreciation charges~~, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. ~~Statistical~~ The recipient or subrecipient may use statistical sampling techniques ~~may be used in~~ when taking these inventories. In addition, ~~the recipient or subrecipient must maintain~~ adequate depreciation records showing the amount of depreciation ~~must be maintained~~.

### § 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the ~~non-Federal entity's documented~~ recipient's or subrecipient's established written policies for ~~the improvement of~~ improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) ~~Such~~ These costs ~~will~~ must be equitably apportioned to all activities of the ~~non-Federal entity-~~ recipient or subrecipient. Income generated from ~~any of~~ these activities ~~will~~ must be

## Unofficial Comparison Version

credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the ~~non-Federal entity's recipient's or subrecipient's~~ objective is to operate ~~such food~~ services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only when:

(1) ~~Where the non-Federal entity~~The recipient or subrecipient can demonstrate unusual circumstances; and

(2) ~~With the approval of~~Approved by the cognizant agency for indirect costs.

### § 200.438 Entertainment ~~costs~~ and Prizes.

(a) ~~Entertainment Costs.~~ Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable, ~~except where~~ unless they have a specific ~~costs that might otherwise be considered entertainment have a~~ and direct programmatic purpose and are ~~authorized either in the approved budget for the~~ included in a Federal award.

(b) Prizes. Costs of prizes ~~or with prior written approval of the~~ challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal ~~awarding agency~~ award. Federal agencies should refer to OMB guidance in M-10-11 "Guidance on the Use of Challenges and Prizes to Promote Open Government," issued March 8, 2010, or its successor.

### § 200.439 Equipment and other capital expenditures.

## Unofficial Comparison Version

(a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, and *capital assets*.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general-purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal ~~awarding~~ agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$~~5~~10,000 or more have the prior written approval of the Federal ~~awarding~~ agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment ~~which~~that 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, ~~for rules~~ on the allowability of depreciation on buildings, capital improvements, and equipment. See ~~also~~ § 200.465 ~~on the allowability of real property and equipment rental costs~~.

(4) When approved as a direct charge ~~pursuant to in accordance with~~ paragraphs (b)(1) through (3) ~~of this section~~, capital expenditures ~~will~~must be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal ~~awarding~~ agency.

(5) The ~~recipient or subrecipient may claim the~~ unamortized portion of any equipment written off as a result of a change in capitalization levels ~~may be recovered~~ by continuing to

## Unofficial Comparison Version

claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the ~~Federal~~ cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the ~~non-Federal entity is instructed by the Federal awarding~~ agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of ~~such~~ disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

### § 200.440 Exchange rates.

~~(a) Cost increases for fluctuations in the exchange rates rate are allowable costs subject to the funding availability of funding. Prior approval of. The recipient or subrecipient must conduct reviews of fluctuations in the exchange rate fluctuations to determine if there is required only when the change results in the the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.~~

~~(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration end date of the Federal award. Subsequent adjustments for currency increases may be allowable allowed only when the non-Federal entity recipient or subrecipient provides the Federal awarding agency or pass-through entity with adequate source documentation from a commonly used source in effect at when the time the expense cost was made, incurred and to the extent that sufficient Federal funds are available.~~

**§ 200.441 Fines, penalties, damages and other settlements.**

Costs resulting from ~~non-Federal entity~~ recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, ~~state, tribal~~ State, local, ~~tribal~~, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with ~~the~~ prior written approval of the Federal ~~awarding~~ agency. See ~~also~~ § 200.435.

**§ 200.442 Fund raising and investment management costs.**

(a) Costs of organized ~~fund-raising~~ fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions, are unallowable. ~~Fund-raising~~ Fundraising costs for ~~the purposes of~~ meeting the Federal program objectives are allowable with ~~the~~ prior written approval ~~from of~~ the Federal ~~awarding~~ agency. ~~Proposal costs are covered in § 200.460.~~

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds, which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable ~~fund-raising~~ fundraising and investment activities must be allocated as an appropriate share of indirect costs ~~under the conditions described in~~ accordance with § 200.413.

**§ 200.443 Gains and losses on ~~the~~ disposition of depreciable assets.**

## Unofficial Comparison Version

(a) ~~Gains~~The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property ~~must be included~~ in the year ~~in which~~ they occur as credits or charges to the asset cost grouping(s) ~~in which~~of the property ~~was included~~. The amount of the gain or loss ~~to be included as a credit or charge to the appropriate asset cost grouping(s)~~ is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item, and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from ~~the failure~~ failing to maintain ~~permissible~~proper insurance, except as ~~otherwise~~ provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances ~~in~~ ~~Heu~~instead of depreciation.

(5) Gains and losses arising from ~~mass or~~ extraordinary or bulk sales, retirements, or other dispositions must be considered on ~~a case-by-case~~an individual basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) ~~of this section, e.g., land,~~ must be excluded in computing Federal award costs.

## Unofficial Comparison Version

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 ~~of this part.~~

### § 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable ~~(except as provided in § 200.475).~~ Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a ~~state~~State or the chief executive of a local government or the chief executive of an Indian ~~tribe~~Tribe;

(2) Salaries and other expenses of a ~~state~~State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, ~~or~~ school board, ~~etc.~~, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation ~~(however. However,~~ this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided ~~for~~ as a direct cost under a program statute or regulation.

(b) ~~For~~ Indian ~~tribes~~Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 ~~of this part~~;) ~~may include~~ up to 50% percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and ~~his or her~~their staff ~~can be included~~ in the indirect cost calculation without documentation.



**§ 200.445 Goods or services for personal use.**

(a) Costs of goods or services for ~~the~~ personal use of the ~~non-Federal entity's recipient's~~ or ~~subrecipient's~~ employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) ~~Costs of housing (e.g.,~~ Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, ~~to be allowable direct~~ these costs must be approved in advance by a Federal ~~awarding~~ agency ~~to be allowable~~.

**§ 200.446 Idle facilities and idle capacity.**

(a) ~~As used in this section~~ Definitions for the ~~following terms have the meanings set forth in~~ purpose of this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the ~~non-Federal entity recipient or subrecipient~~.

(2) Idle facilities ~~means mean~~ completely unused facilities that ~~are excess to exceed~~ the ~~non-Federal entity's recipient's or subrecipient's~~ current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

## Unofficial Comparison Version

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means ~~costs such as~~ maintenance, repair, housing, rent, and other related costs, ~~e.g., (for example, insurance, interest, and depreciation-)~~. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, ~~e.g., (for example, consolidated data centers-)~~.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate, and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under ~~the~~ ~~this~~ ~~exception~~ ~~stated~~ ~~in~~ ~~this~~ ~~subsection~~, costs of idle facilities are allowable for a reasonable period ~~of time~~, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. ~~Such~~ ~~These~~ costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound

business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

**§ 200.447 Insurance and indemnification.**

(a) Costs of insurance required or approved and maintained, ~~pursuant to~~ by the terms and conditions of the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) ~~Types and~~The types, extent, and cost of coverage are in accordance with the ~~non-Federal entity's~~ recipient's or subrecipient's established written policy and sound business practicepractices.

(2) Costs of insurance or ~~of~~ contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal ~~awarding~~ agency has ~~specifically required or~~ approved ~~such~~the costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) ~~Costs of insurance~~Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only ~~to the extent that~~when the insurance represents additional compensation (see § 200.431). ~~The cost of such~~This insurance is unallowable when the ~~non-Federal entity~~recipient or subrecipient is identified as the beneficiary ~~is unallowable~~.

## Unofficial Comparison Version

(5) Insurance ~~against defects. Costs of insurance with respect to any~~ costs incurred to correct defects in the ~~non-Federal entity's recipient's or subrecipient's~~ materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of a Federal research ~~programs program~~ only ~~to when the~~ extent that the Federal research ~~programs involve program involves~~ human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and ~~must be~~ assigned to individual projects based on ~~the manner in which~~ how the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly ~~provided for~~ authorized in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for ~~certain~~ self-insurance ~~programs program~~, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following ~~provisions requirements~~:

(1) The type ~~of coverage and the~~, extent, and cost of coverage and the rates and premiums would have been allowed had the insurance (including reinsurance) been purchased to cover the risks. However, a provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the

## Unofficial Comparison Version

discounted present value of the liability. The rate used for discounting the liability must be determined by ~~giving consideration to such~~ considering factors such as the ~~non-Federal entity's recipient's or subrecipient's~~ settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)

(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, ~~etc.~~ and other relevant factors or information. Reserve levels related to employee-related coverages ~~will~~ must normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels ~~in excess of the amounts based on~~ exceeding the above-mentioned value must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to ~~the~~ types of insured risk and losses generated by the various insured activities or agencies of the ~~non-Federal entity recipient or subrecipient~~. If individual departments or agencies of the ~~non-Federal entity recipient or subrecipient~~ experience significantly different levels of claims for a particular risk, those differences ~~are to~~ must be

recognized by ~~the use of~~using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (~~e.g., for example,~~ general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with ~~applicable Federal~~the ~~claims collection regulations of the~~ cognizant agency for indirect cost, ~~claims collection regulations.~~

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the ~~non-Federal entity~~recipient or subrecipient against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the ~~non-Federal entity~~recipient or ~~subrecipient~~ only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) ~~of this section.~~

#### § 200.448 Intellectual property.

(a) *Patent and copyright costs.*

(1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award; and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where ~~the Federal Government requires~~

that a title or a royalty-free license ~~is required by the Federal Government to~~ be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See ~~also~~ § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for the use of patents and copyrights.*

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or ~~has been~~ administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

## Unofficial Comparison Version

(2) Special care should be exercised in determining reasonableness ~~wherewhen~~ the royalties may have been ~~arrived at~~obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the ~~non-Federal entity~~recipient or subrecipient.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a ~~non-Federal entity~~recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the ~~non-Federal entity~~recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the ~~non-Federal entity~~recipient or subrecipient retained the title ~~thereto~~.

### § 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the ~~non-Federal entity's~~recipient's or subrecipient's own funds, ~~however represented~~, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the ~~conditions in~~requirements of this section.

(b) *Capital assets.*

(1) Capital assets is defined ~~as noted in § 200.1 of this part~~. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.



## Unofficial Comparison Version

(2) For ~~non-Federal entity~~ recipient or subrecipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all ~~non-Federal entities~~ recipients and subrecipients.*

(1) The ~~non-Federal entity~~ recipient or subrecipient uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the ~~non-Federal entity~~ recipient or subrecipient from an unrelated (arm's length) third party.

(3) The ~~non-Federal entity~~ recipient or subrecipient obtains the financing via an arm's-length transaction (~~that is meaning~~, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The ~~non-Federal entity~~ recipient or subrecipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The ~~non-Federal entity~~ recipient or subrecipient expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost

## Unofficial Comparison Version

is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities; unless the ~~non-Federal entity~~ recipient or subrecipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, “initial equity contribution” means the amount or value of contributions made by the ~~non-Federal entity~~ recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The ~~non-Federal entity~~ recipient or subrecipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The ~~non-Federal entity~~ recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the ~~non-Federal entity~~ recipient or subrecipient must prepare a cumulative (from the ~~project's inception of the project~~) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the ~~non-Federal entity~~ recipient or subrecipient must divide the ~~above-mentioned~~ annual amounts ~~determined in step (i)~~ by the ~~number of~~ months in the year (usually 12) that the building is in service.

## Unofficial Comparison Version

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The ~~rate of~~ interest rate to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) *Additional conditions for states, local governments and Indian ~~tribes~~ Tribes.* For interest costs to be allowable for states, local governments, and Indian Tribes, the ~~non-Federal entity~~ recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or ~~for land and equipment~~ after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against ~~current~~ allowable interest cost (paragraph (c)(5), ~~above~~)) also applies to earnings on debt service reserve funds.

(2) The ~~non-Federal entity will~~ recipient or subrecipient must negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as ~~outlined~~ described in paragraph (c)(7) ~~of this section~~). For this purpose, a ~~non-Federal entity~~ recipient or subrecipient must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) *Additional conditions for IHEs.* For interest costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

## Unofficial Comparison Version

(f) *Additional condition for nonprofit organizations.* For **interest** costs to be allowable, the nonprofit organization **must have** incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201—2(a). The ~~non-Federal entity's~~ nonprofit organization's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital<sup>22</sup>,” and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction<sup>22</sup>.”

### § 200.450 Lobbying.

(a) The ~~cost~~ costs of certain influencing activities associated with obtaining grants, ~~contracts, or~~ cooperative agreements, **contracts**, or loans ~~is an~~ are unallowable ~~cost~~. Lobbying with respect to certain grants, ~~contracts,~~ cooperative agreements, **contracts**, and loans is governed by relevant statutes, including ~~among others,~~ the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying<sup>22</sup>,” published on February 26, 1990, including definitions, and the Office of Management and Budget “~~Governmentwide~~ Government-wide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or

## Unofficial Comparison Version

officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the ~~merits of the matter~~merit.

(c) In addition ~~to the above~~, the following restrictions ~~are applicable~~apply to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, ~~state~~State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established ~~for the purpose of influencing~~to influence the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or ~~state~~State legislation;

(B) The enactment or modification of any pending Federal or ~~state~~State legislation through communication with any member or employee of the Congress or ~~state~~State legislature (including efforts to influence ~~state~~State or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or ~~state~~State legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, ~~fund raising~~fundraising drive, lobbying campaign or letter writing or telephone campaign;

or

## Unofficial Comparison Version

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a ~~state~~State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the ~~non-Federal entity's recipient's or subrecipient's~~ member of congress, legislative body ~~or a~~, subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence ~~state~~State legislation ~~in order~~ to directly reduce the cost, or to avoid material impairment of the

## Unofficial Comparison Version

~~non-Federal entity~~'s recipient's or subrecipient's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities ~~in order~~ to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (I.R.C.) §§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a ~~non-Federal entity~~ recipient or subrecipient seeks reimbursement for indirect ~~(F&A)~~ costs, total lobbying costs must be identified separately ~~identified~~ in the indirect ~~(F&A)~~ cost rate proposal; and thereafter be treated as other unallowable activity costs in accordance with ~~the procedures of~~ § 200.413.

(vi) The ~~non-Federal entity~~ recipient or subrecipient must submit ~~as part of its annual indirect (F&A) cost rate proposal~~ a certification that the requirements and standards of this section have been complied with: ~~as part of its annual indirect cost rate proposal.~~ (See ~~also~~ § 200.415.)

(vii)

## Unofficial Comparison Version

(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record-keeping requirements in § 200.302 with respect to lobbying costs during ~~any~~ a particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) ~~of this section~~) for 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the ~~non-Federal entity~~ recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) ~~of this section~~ are met, ~~non-Federal entities~~ recipients and subrecipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) ~~The~~ In consultation with OMB, the Federal ~~awarding~~ agency must establish procedures for resolving, in advance, ~~in consultation with OMB~~, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or ~~non-Federal entity~~ recipient or subrecipient from contesting the lawfulness of such a determination.



**§ 200.451 Losses on other awards or contracts.**

Any excess ~~of~~ costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the ~~non-Federal entity's recipient's or subrecipient's~~ contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (~~F&A~~) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another ~~award or contract~~ is unallowable. All losses are not allowable indirect (~~F&A~~) costs and ~~are required to~~ must be included in the appropriate indirect cost rate base for ~~allocation of~~ allocating indirect costs.

**§ 200.452 Maintenance and repair costs.**

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements ~~which~~ that add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

**§ 200.453 Materials and supplies costs, including costs of computing devices.**

(a) Costs incurred for materials, supplies, and fabricated parts necessary ~~to carry out for the performance of~~ a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently

## Unofficial Comparison Version

applied. Incoming transportation charges are ~~a proper~~ allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. ~~In the specific case of~~ Charging computing devices, ~~charging~~ as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where ~~federally~~ Federally-donated or furnished materials are used in performing the Federal award, ~~such~~ the materials will be used without charge.

### **§ 200.454 Memberships, subscriptions, and professional activity costs.**

(a) Costs of the ~~non-Federal entity's~~ recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the ~~non-Federal entity's~~ recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable ~~with prior approval by the Federal awarding agency or pass-through entity.~~

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See ~~also~~ § 200.450.

### **§ 200.455 Organization costs.**

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment ~~counselor~~ counselors, whether or

## Unofficial Comparison Version

not employees of the ~~non-Federal entity~~ recipient or subrecipient in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal ~~awarding~~ agency.

(b) The costs of any activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing, are unallowable.

(c) The costs related to data and evaluation are allowable and include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cyber security, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation.

### **§ 200.456 Participant support costs.**

Participant support costs ~~as defined in § 200.1~~ are allowable ~~with~~ (see § 200.1). The classification of items as participant support costs must be documented in the ~~prior approval of the~~ recipient's or subrecipient's written policies and procedures and treated consistently across all Federal ~~awarding agency~~ awards.

### **§ 200.457 Plant and security costs.**

Necessary and reasonable expenses incurred for the protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and

## Unofficial Comparison Version

uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

### § 200.458 Pre-award costs.

Pre-award costs are those incurred ~~prior to~~before the ~~effective~~start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work.

~~Such~~These costs are allowable only to the extent that they would have been ~~allowable~~allowed if incurred after the ~~start~~ date of the Federal award and only with the ~~prior~~ written approval of the Federal ~~awarding~~agency. If ~~charged to the award~~approved, these costs must be charged to the initial budget period of the ~~Federal~~ award; unless otherwise specified by the Federal ~~awarding~~ agency or pass-through entity.

### § 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill; and who are not officers or employees of the ~~non-Federal entity; recipient or subrecipient~~ are allowable, subject to paragraphs (b) and (c) ~~of this section~~ when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any ~~special~~ combination of factors is necessarily determinative. However, the following factors are relevant:

## Unofficial Comparison Version

- (1) The nature and scope of the service rendered in relation to the service required.
  - (2) The necessity of contracting for the service, considering the ~~non-Federal entity's~~ recipient's or subrecipient's capability in the particular area.
  - (3) The past pattern of such costs, particularly in the years prior to ~~receiving a Federal awards.~~ award(s).
  - (4) The impact of Federal awards on the ~~non-Federal entity's~~ recipient's or subrecipient's business (~~i.e., meaning~~, what new problems have arisen).
  - (5) Whether the proportion of Federal work to the ~~non-Federal entity's~~ recipient's or subrecipient's total business ~~is such as to influence~~ influences the ~~non-Federal entity~~ recipient or subrecipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
  - (6) Whether the service can be performed more economically by direct employment rather than contracting.
  - (7) The qualifications of the individual or ~~entity rendering~~ entity providing the service and the customary fees charged, especially on non-federally funded activities.
  - (8) Adequacy of the contractual agreement for the service (~~e.g., for example~~, description of the service, estimate of ~~the~~ time required, rate of compensation, and termination provisions).
- ~~(e) In addition to the factors in paragraph (b) of this section, to~~ (c) To be allowable, retainer fees must be supported by evidence of bona fide services available or rendered— in addition to the factors in paragraph (b).

### § 200.460 Proposal costs.

## Unofficial Comparison Version

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including ~~the development of~~ developing data necessary to support the ~~non-Federal entity's~~ recipient's or subrecipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (~~F&A~~) costs and allocated ~~currently~~ to all ~~current~~ activities of the ~~non-Federal entity~~ recipient or subrecipient. No proposal costs of past accounting periods ~~will~~ may be ~~allocable~~ allocated to the current period.

### § 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling, are allowable. ~~If these costs are not identifiable with a particular cost objective, they~~ These costs should be allocated as indirect costs to all benefiting activities of the ~~non-Federal entity~~ recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, ~~article processing charges, or similar open access fees~~ for professional journal publications ~~and other peer-reviewed publications developed under a Federal award~~ are allowable where:

- (1) The publications report work supported by the Federal Government; and
- (2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.
- (3) The ~~non-Federal entity~~ recipient or subrecipient may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs ~~are~~ were not incurred during the period of performance of the Federal award. If ~~charged to the award~~ incurred,

these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal ~~awarding~~ agency.

**§ 200.462 Rearrangement and reconversion costs.**

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations ~~are allowable as a direct cost if the costs are incurred specifically for a Federal award are allowable as a direct cost and~~ with the prior approval of the Federal ~~awarding~~ agency or pass-through entity.

(b) Costs incurred in ~~restoring or rehabilitating the restoration or rehabilitation of the non-Federal entity's recipient's or subrecipient's~~ facilities to approximately the same condition existing immediately ~~prior to before~~ the commencement of a Federal ~~awards, award(s)~~, less costs related to normal wear and tear, are allowable.

**§ 200.463 Recruiting costs.**

(a) Subject to paragraphs (b) and (c) ~~of this section,~~, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain ~~an~~ adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the ~~non-Federal entity's recipient's or subrecipient's~~ standard recruitment program. ~~Where~~ ~~When~~ the ~~non-Federal entity recipient or subrecipient~~ uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

## Unofficial Comparison Version

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the ~~non-Federal entity~~ recipient or subrecipient, are unallowable.

(c) ~~Where~~If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part ~~to~~by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the ~~non-Federal entity will be required to~~recipient or subrecipient must refund or credit the Federal Government for its share of ~~such relocation costs to the Federal Government cost~~. See ~~also~~ § 200.464.

(d) Short-term, ~~travel~~ visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, ~~they and~~ can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;
- (3) Be consistent with the ~~non-Federal entity's~~recipient's or subrecipient's cost accounting practices and ~~non-Federal entity~~established written policy; and
- (4) Meet the definition of "direct cost" as described in the applicable cost principles.

### § 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or ~~for~~ a stated period of not less than 12 months) of an existing employee or



## Unofficial Comparison Version

upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) ~~of this section~~, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of ~~his or her~~their immediate family and ~~his~~their household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to ~~8 per cent~~eight percent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such ~~as the costs of~~canceling an unexpired lease, transportation of personal property, and purchasing

## Unofficial Comparison Version

insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) ~~of this section. When~~. If relocation costs incurred incident to the recruitment of a new ~~employee~~ employee have been ~~charged to~~ funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the ~~non-Federal entity~~ recipient or subrecipient must refund or credit the Federal Government for its share of the cost. ~~If a new employee is relocating to an overseas location and dependents are not permitted at the location for any reason, and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474. Travel costs, and, not this relocation~~ relocation costs ~~of employees (See also under § 200.464).~~

(d) The following costs related to relocation are unallowable:

- (1) Fees and other costs associated with acquiring a new home.
- (2) A loss on the sale of a former home.
- (3) Continuing mortgage principal and interest payments on a home being sold.
- (4) Income taxes paid by an employee related to reimbursed relocation costs.

### § 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) ~~of this section,~~, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: ~~rental~~ costs of comparable ~~property, if any~~ rental properties; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

## Unofficial Comparison Version

Rental arrangements should be reviewed periodically to determine if circumstances have changed and ~~if~~ other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount ~~that would be~~ allowed ~~had~~ if the ~~non-Federal entity~~ recipient or subrecipient had continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount ~~(as explained described~~ in paragraph (b) ~~of this section)~~. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement ~~is able to~~ can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

- (1) Divisions of the ~~non-Federal entity~~; recipient or subrecipient;
- (2) The ~~non-Federal entity~~ recipient or subrecipient under common control through common officers, directors, or members; and
- (3) The ~~non-Federal entity~~ recipient or subrecipient and a director, trustee, officer, or key employee of the ~~non-Federal entity~~ recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the ~~non-Federal entity~~ recipient or subrecipient may establish a separate corporation ~~for the sole purpose of owning~~ to own property and ~~leasing~~ lease it back to the ~~non-Federal entity~~ recipient or subrecipient.
- (4) Family members include one party with any of the following relationships to another party:

## Unofficial Comparison Version

- (i) Spouse, and parents thereof;
- (ii) Children, and spouses thereof;
- (iii) Parents, and spouses thereof;
- (iv) Siblings, and spouses thereof;
- (v) Grandparents and grandchildren, and spouses thereof;
- (vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
- (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

~~(5) Rental costs under leases which are required to be treated as capital leases 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. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital 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.~~

~~(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.~~

(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

## Unofficial Comparison Version

allowable only up to the amount (~~as explained described~~ in paragraph (b) ~~of this section~~) ~~that would be~~) allowed ~~had~~if the ~~non-Federal entity~~recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable ~~to the extent~~if they meet the criteria in § 200.449. Unallowable costs include ~~amounts paid for profit, management fees, and taxes~~costs that would not have been incurred if the recipient or subrecipient had ~~the non-Federal entity~~purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the ~~non-Federal entity~~recipient or subrecipient is required to recognize an intangible right-to-use lease asset (~~per~~under GASB) standards or right--of--use operating lease ~~workspace~~ asset (~~per~~FASB)under GAAP for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the ~~non-Federal entity~~, ~~to include~~recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office ~~workspace~~is unallowable.

### § 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and ~~other programs of~~student aid ~~programs~~ at IHEs are allowable only when the purpose of the Federal award is to provide training to ~~selected~~ participants, and the ~~charge is approved by the~~Federal ~~awarding~~agency. ~~approves the cost~~. However, tuition remission and other forms of compensation paid as, or ~~in lieu~~instead of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

## Unofficial Comparison Version

(2) Tuition remission and other support are provided in accordance with ~~the~~ established ~~written~~ policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) ~~During the academic period, the~~The student is enrolled in an advanced degree program at ~~a non-Federal entity~~the IHE or an affiliated institution ~~during the academic period~~ and the ~~student's~~ activities ~~of the student in relation to~~under the Federal award are related to ~~the~~their degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) ~~It is the IHE's practice to similarly compensate~~The IHE compensates students under Federal awards as well as other activities: ~~in similar manners.~~

(b) Charges for tuition remission and other forms of compensation paid to students as, or ~~in lieu~~instead of, salaries and wages ~~must be~~subject to the reporting requirements in § 200.430, ~~and~~. The charges must be treated as a direct or indirect cost in accordance with the actual work ~~being~~performed. Tuition remission may be charged on an average rate basis. See ~~also~~ § 200.431.

### § 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the ~~non-Federal entity~~ (recipient or subrecipient are unallowable unless they are allowed under § 200.421) ~~are unallowable, except as direct costs, with prior approval by the Federal awarding agency when and are necessary for~~to meet the ~~performance~~requirements of the Federal award.

### § 200.468 Specialized service facilities.

## Unofficial Comparison Version

(a) The costs of services provided by highly complex or specialized facilities operated by the ~~non-Federal entity, such as computing facilities, wind tunnels, and reactors~~ recipient or subrecipient are allowable; provided the charges for the services meet the conditions of either paragraph (b) or (c) ~~of this section, and, in addition,~~ and take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. ~~These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.~~

(b) The costs of such services, when material, must be charged directly to the applicable Federal awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the ~~non-Federal entity~~ recipient or subrecipient, including usage by the ~~non-Federal entity~~ recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. ~~The~~ Each service's costs ~~of each service~~ must ~~consist~~ normally consist of ~~both~~ its direct costs and ~~its~~ an allocable share of all indirect (~~F&A~~) costs. Rates must be adjusted at least biennially; and must ~~take into consideration~~ consider any over/ or under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (~~F&A~~) costs.

(d) Under ~~some~~ extraordinary circumstances, ~~where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal~~ the cognizant agency for indirect costs and the

recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

**§ 200.469 Student activity costs.**

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless ~~specifically provided for~~ expressly authorized in the Federal award.

**§ 200.470 Taxes (including Value Added Tax).**

(a) For states, local governments, and Indian ~~tribes~~ Tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are, in effect, user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal ~~awarding~~ agency to identify taxes where Federal participation is inappropriate. ~~Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the~~ The cognizant agency for indirect costs may accept a reasonable approximation ~~thereof~~ in circumstances where ~~determining the amount of unallowable taxes would require an excessive amount of effort.~~

(b) For nonprofit organizations and IHEs:

(1) ~~In general, taxes which the non-Federal entity~~ Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP, ~~and~~ are generally allowable. These costs include payments made to local governments ~~in lieu~~ instead of taxes



## Unofficial Comparison Version

~~which~~ and that are commensurate with the local government services received. The following taxes are ~~allowable, except for: unallowable:~~

(i) Taxes ~~from~~ for which exemptions are available to the ~~non-Federal entity~~ recipient or subrecipient directly or which are available to the ~~non-Federal entity~~ recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal ~~awarding~~ agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes, ~~and any payment to the non-Federal entity of~~ and interest thereon, which were allowed as Federal award costs, ~~will~~ must be credited ~~either to the Federal Government~~ as a cost reduction or cash refund, as appropriate, ~~to the Federal Government.~~

However, any interest ~~actually~~ paid or credited to ~~an non-Federal entity~~ a recipient or subrecipient incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the ~~non-Federal entity~~ Government has ~~been~~ reimbursed ~~by the Federal Government~~ recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT)*. Foreign taxes charged for ~~the purchase of goods or services~~ procurement transactions that a ~~non-Federal entity~~ recipient or subrecipient is legally required to pay in a country is ~~an allowable expense under Federal awards.~~ Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the ~~non-Federal entity~~ recipient or

~~subrecipient~~ relate to allowable cost, these costs must be credited to the Federal ~~awarding~~ agency ~~either as costs~~ a cost reduction or cash refunds. ~~If, as appropriate. In cases where~~ the costs are credited back to the Federal award, the ~~non-Federal entity~~ recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, ~~the Federal agency may allow the recipient or subrecipient to use the~~ foreign government tax refund for approved activities under the Federal award ~~with prior approval of the Federal awarding agency.~~

**§ 200.471 Telecommunication ~~costs~~ and video surveillance costs.**

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, ~~and~~ cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

**§ 200.472 Termination ~~and standard closeout~~ costs.**

(a) *Termination Costs.* Termination of a Federal award generally gives rise to the incurrence of costs, ~~or~~ the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They ~~are to~~ must be used in conjunction with the other ~~provision~~ termination requirements of this part ~~in termination situations.~~

## Unofficial Comparison Version

(a1) The cost of items reasonably usable on the ~~non-Federal entity's~~ recipient's or subrecipient's other work ~~must not be allowable~~ is unallowable unless the ~~non-Federal entity~~ recipient or subrecipient submits evidence that it would not retain such items ~~at cost~~ without sustaining a loss. In deciding whether such items are reasonably usable on other work of the ~~non-Federal entity~~ recipient or subrecipient, the Federal ~~awarding~~ agency or pass-through entity should consider the ~~non-Federal entity's~~ recipient's or subrecipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the ~~non-Federal entity~~ recipient or subrecipient must be ~~regarded as~~ considered evidence that ~~such~~ the items are reasonably usable on the ~~non-Federal entity's~~ recipient's or subrecipient's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order ~~are in excess of~~ do not exceed the reasonable quantitative requirements of other work.

(b2) If ~~in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs~~ recipient or subrecipient cannot ~~be discontinued~~ discontinue certain costs immediately after the effective ~~date of~~ termination, ~~such~~ date, despite making all reasonable efforts, then the costs are generally allowable within the limitations ~~set forth in~~ of this part, ~~except that any such~~. Any costs continuing after termination due to the negligent or willful failure of the ~~non-Federal entity~~ recipient or subrecipient to ~~immediately~~ discontinue ~~such~~ the costs ~~must be~~ are unallowable.

(e3) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(4i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the ~~non-Federal entity,~~ recipient or subrecipient;

## Unofficial Comparison Version

~~(2ii)~~ The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal ~~awarding~~ agency (see ~~also~~ § 200.313 (d)); and

~~(3iii)~~ The loss of useful value for ~~any~~ one terminated Federal award is limited to ~~that~~ the portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

~~(d4)~~ Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

~~(4i)~~ The amount of ~~such~~ claimed rental ~~claimed~~ costs does not exceed the reasonable use value of the property leased for the period of the Federal award and ~~such~~ a further period as may be reasonable; and

~~(2ii)~~ The ~~non-Federal entity~~ recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of ~~such~~ the lease. ~~There also may be included the~~ The cost of alterations of ~~such~~ the leased property, provided ~~such alterations~~ they were necessary for the performance of the Federal award, and ~~the cost~~ of reasonable restoration required by the ~~provisions of the~~ lease may be included.

~~(e) Settlement expenses including the~~ (5) The following settlement expenses are generally allowable:

~~(4i)~~ Accounting, legal, clerical, and similar costs that are reasonably necessary for:

~~(iA)~~ The preparation and presentation to the Federal ~~awarding~~ agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the

## Unofficial Comparison Version

Federal award, unless the termination is for cause (see ~~subpart D, including §§ 200.339--200.343~~); and

(~~ii~~B) The termination and settlement of subawards.

(~~2~~ii) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(~~f~~6) Claims under subawards, including the allocable portion of claims ~~which are~~ common to the Federal award and ~~to~~ other work of the ~~non-Federal entity~~ recipient or subrecipient, are generally allowable. An appropriate share of the ~~non-Federal entity's~~ recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is ~~otherwise~~ consistent with the ~~basic guidelines contained in~~ requirements of § 200.414. ~~The~~ These allocated indirect costs ~~so allocated~~ must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property). These costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

### § 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

**§ 200.474 Transportation costs.**

Costs incurred for freight, express, cartage, postage, and other transportation services relating ~~either~~ to goods purchased, in process, or delivered, are allowable. When ~~such~~the costs can be readily ~~be~~ identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. ~~Where~~When identification with the materials received cannot be readily ~~be made, identified,~~ the inbound transportation cost may be charged to the appropriate indirect (~~F&A~~) cost accounts if the ~~non-Federal entity~~recipient or ~~subrecipient~~ follows a consistent, equitable procedure in this respect. ~~Outbound freight, if~~ If reimbursable under the terms and conditions of the Federal award, ~~outbound freight~~ should be treated as a direct cost.

**§ 200.475 Travel costs.**

(a) *General.* Travel costs ~~are include~~ the ~~expenses for~~ transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the ~~non-Federal entity.~~ ~~Such~~recipient or subrecipient. These costs may be charged on an actual cost basis, ~~on~~a per diem or mileage basis ~~in lieu of actual costs incurred,~~ or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, ~~and results in charges.~~ The method used must be consistent with those normally allowed in like circumstances in the ~~non-Federal entity's non-federally funded~~recipient's or subrecipient's other activities and in accordance with ~~non-Federal entity's~~the recipient's or subrecipient's established written ~~travel reimbursement~~policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal ~~awarding~~ agency or pass-through entity when they are specifically related to the Federal award.

## Unofficial Comparison Version

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the ~~non-Federal entity~~ recipient or subrecipient in its regular operations as the result of the ~~non-Federal entity's~~ recipient's or subrecipient's established written ~~travel~~ policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

- (1) Participation of the individual is necessary ~~to~~for the Federal award; and
- (2) The costs are reasonable and consistent with ~~non-Federal entity's~~the recipient's or subrecipient's established ~~travel~~written policy.

(c)

(1) Temporary dependent care costs (~~as~~ dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

- (i) The costs are a direct result of the individual's travel for the Federal award;
- (ii) The costs are consistent with the ~~non-Federal entity's documented travel~~recipient's or subrecipient's established written policy for all ~~entity~~travel; and
- (iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of ~~duration of~~ six months or more with prior approval of the Federal ~~awarding~~agency. See ~~also~~ § 200.432.

(d) In the absence of an ~~acceptable, established~~ written ~~non-Federal entity~~ policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701—11; (“Travel and Subsistence Expenses; Mileage Allowances”), ~~or~~ by the Administrator of General Services, or by

## Unofficial Comparison Version

the President (or ~~his or her~~their designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205--46(a)).

(e) *Commercial air travel.*

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The ~~non-Federal entity~~recipient or subrecipient must justify and document these conditions on a case-by-case basis ~~in order~~ for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a ~~non-Federal entity's~~recipient's or subrecipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the ~~non-Federal entity~~recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* ~~Costs of travel~~Travel costs by ~~non-Federal entity~~recipient or subrecipient-owned, -leased, or -chartered aircraft include the cost of ~~the~~ lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of ~~such~~these costs that ~~exceed~~exceed the cost of airfare, as provided for in paragraph (d) ~~of this section~~, is unallowable.



**§ 200.476 Trustees.**

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See ~~also~~ § 200.475.

**Subpart F—Audit Requirements**

**General**

**§ 200.500 Purpose.**

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

**Audits**

**§ 200.501 Audit requirements.**

(a) *Audit required.* A non-Federal entity that expends ~~\$7501,000~~,000 or more during the non-Federal ~~entity's~~ entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends ~~\$7501,000~~ ~~or more~~,000 in Federal awards during ~~the non-Federal entity's~~ its fiscal year ~~in Federal awards~~ must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) ~~of this section~~ or (d).

(c) *Program-specific audit election.* ~~When an auditee (in general).~~ A non-Federal entity may elect to have a program-specific audit conducted in accordance with § 200.507 if the following conditions are met:

(1) The non-Federal entity expends Federal awards under only one Federal program (excluding ~~R&D~~ research and ~~the~~ development); and

## Unofficial Comparison Version

(2) The Federal ~~program's~~ program's statutes, or regulations, or ~~the~~ terms and conditions of the Federal award, do not require a financial statement audit of the ~~auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507. A program non-~~ Federal entity.

(d) *Program-specific audit* ~~may not be elected~~ *election for R&D unless research and development. A non-Federal entity may elect to have a program-specific audit for research and development conducted in accordance with § 200.507, but only if all of the following conditions are met:*

(1) *The non-Federal entity expends Federal awards* ~~expended were received only~~ from the same Federal agency, or the same Federal agency and the same pass-through entity; ~~and that~~

(2) *The Federal agency, or pass-through entity in the case of a subrecipient, approves a program-specific audit in advance* ~~a program-specific audit.~~

(~~d~~e) *Exemption when Federal awards expended are less than \$7501,000,000.* A non-Federal entity that expends less than \$7501,000,000 in Federal awards during ~~the non-Federal entity's~~ fiscal year ~~in Federal awards~~ is exempt from Federal audit requirements for that year, except as noted in § 200.503, ~~but~~. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

(ef) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

## Unofficial Comparison Version

(fg) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. ~~The payments~~ Payments received for goods or services provided as a contractor ~~are not Federal awards. Section § 200.331 sets forth the considerations in determining whether payments constitute~~ under a Federal award ~~or a payment for goods or services provided as a contractor.~~ (see § 200.331) are not subject to audit under this part.

(gh) *Compliance responsibility for contractors.* In most cases, the ~~auditee's~~ auditee's compliance responsibility for contractors is ~~only~~ to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal ~~awards~~ award. Federal award compliance requirements normally do not ~~pass through~~ flow down to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions ~~which are structured such that they~~ require a contractor ~~to be~~ responsible for program compliance ~~or~~ and the ~~contractor's~~ contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include ~~determining whether a~~ determination that these transactions ~~are in compliance~~ comply with Federal statutes, regulations, and the terms and conditions of a Federal ~~awards~~ award.

(hi) *For-profit subrecipient.* ~~Since this~~ This part does not apply to for-profit ~~subrecipients,~~ organizations. As necessary, the pass-through entity is responsible for establishing requirements, ~~as necessary,~~ to ensure compliance by for-profit subrecipients. The ~~agreements~~ subaward with ~~the~~ a for-profit subrecipient must describe applicable compliance requirements and the for-profit ~~subrecipient's~~ subrecipient's compliance responsibility. Methods to ensure compliance for

Federal awards made to for-profit subrecipients may include pre-award audits, monitoring ~~during~~ throughout the ~~agreement~~ performance of the subaward, and post-award audits. ~~See also~~ (see § 200.332-).

**§ 200.502 Basis for determining Federal awards expended.**

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity ~~related to the Federal award~~ pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: ~~expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.~~

(1) Expenditure/expense transactions associated with grants, cooperative agreements, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, and direct appropriations;

(2) The disbursement of funds to subrecipients;

(3) The use of loan proceeds under loan and loan guarantee programs;

(4) The receipt of property (including surplus property);

(5) The receipt or use of program income;

## Unofficial Comparison Version

(6) The distribution or use of food commodities;

(7) The disbursement of amounts entitling the non-Federal entity to an interest subsidy;

and

(8) The period when insurance is in force.

(b) *Loan and loan guarantees (loans)*. ~~Since the~~ Loan and loan guarantees retain their Federal character through the end of the Federal award period of performance unless otherwise specified in statute or Federal agency regulations. The Federal Government is at risk for loans until the debt is repaid. ~~Therefore~~, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, ~~(except as noted in paragraphs (c) and (d) of this section:)~~:

(1) ~~Value~~The value of new loans made or received during the audit period; plus

(2) ~~Beginning of the audit period~~The balance of loans from previous years ~~at the beginning of the audit period~~ for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at IHEs: Institutions of Higher Education (IHE)*.

When loans are made to students of an IHE, but the IHE ~~itself~~ does not ~~make~~have continuing compliance requirements for the loans, then only the value of loans made during the audit period ~~must be~~ considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

## Unofficial Comparison Version

(d) *Prior loan and loan guarantees (loans)*. Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when ~~the~~ Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds*. The cumulative balance of Federal awards for endowment funds that are federally restricted ~~are~~is considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent*. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and ~~is~~ subject to audit under this part.

(g) *Valuing non-cash assistance*. Federal non-cash assistance~~, (such as free rent, food commodities, donated property, or donated surplus property, that is received as part of a Federal award to carry out a Federal program)~~ must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency ~~and must be included in determining Federal awards expended under this part~~

(h) *Medicare*. Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid*. Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless

a ~~state~~State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans ~~made~~from the National Credit Union Share Insurance Fund and the Central Liquidity Facility ~~that are~~ funded by contributions from insured non-Federal entities are not considered Federal awards expended.

**§ 200.503 Relation to other audit requirements.**

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such ~~an~~ audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange ~~for~~ additional audits ~~which are necessary~~ to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits ~~to~~ not to be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through ~~entity's~~entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be

## Unofficial Comparison Version

planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal ~~official~~officials. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) *Federal agency to pay for additional audits.* A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) *Request for a program to be audited as a major program.* A Federal ~~awarding~~awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal ~~awarding~~awarding agency conducting or arranging for the additional audits. ~~To allow for planning, such~~Such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. ~~The auditee, after to allow for planning.~~ After consultation with its auditor, ~~the auditee~~the auditee should promptly respond to such a request by informing the Federal ~~awarding~~awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal ~~awarding~~awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal ~~awarding~~awarding agency request, and the Federal ~~awarding~~awarding agency agrees to pay the



full incremental costs, then the auditee must have the program audited as a major program.

~~A~~With approval of the Federal agency, a pass-through entity may use the provisions of this paragraph for a subrecipient.

**§ 200.504 Frequency of audits.**

~~Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits~~Audits required by this part must be performed annually.~~Any biennial audit must cover both years within the biennial period.~~ except as provided in paragraphs (a) and (b):

(a) A ~~state~~State, local government, or Indian ~~tribe~~Tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo ~~its~~biennial (every other year) audits pursuant to this part ~~biennially~~. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo ~~its~~biennial audits pursuant to this part ~~biennially~~. Biennial audits must cover both fiscal years within the biennial period.

**§ 200.505 ~~Sanctions~~Remedies for noncompliance.**

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies ~~and/or~~ pass-through-through entities must take appropriate action as provided in § 200.339.

**§ 200.506 Audit costs.**

See § 200.425.

**§ 200.507 Program-specific audits.**

## Unofficial Comparison Version

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor ~~with respect to~~ concerning internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement, (Part 8, Appendix VI, Program-Specific Audit Guides, ~~which includes a website where a copy of the guide can be obtained.~~). When a current program-specific audit guide is available, the auditor must follow **Generally Accepted Government Auditing Standards (GAGAS)** and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.*

(1) When a current program-specific audit guide is not available, the auditee and auditor must ~~have~~ basically **have** the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, ~~at a minimum,~~ a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

## Unofficial Comparison Version

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements ~~of § 200.514(e)~~ for a major program; ~~in accordance with § 200.514(c)~~;

(iii) ~~Perform procedures to determine~~ Determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements ~~of for a major program under § 200.514(d) for a major program;-)~~;

(iv) Follow up on prior audit findings, ~~and~~ perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511, ~~and report, as a current year audit finding, when~~ ~~When~~ the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, ~~the auditor must report this condition as a current-year audit finding.~~; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The ~~auditor's~~ auditor's report(s) may be in the form of either combined or separate reports ~~and~~. It may be organized differently from the manner presented in this section. The ~~auditor's~~ auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

## Unofficial Comparison Version

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance ~~which~~that includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the ~~auditor's~~auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

*(c) Report submission for program-specific audits.*

(1) The audit must be completed and ~~the reporting required by~~submitted in accordance with paragraph (c)(2) or (c)(3)~~of this section~~. Unless a different period is specified in the program-specific audit guide, the audit must be submitted within ~~the earlier of~~30 calendar days after ~~receipt of~~receiving the ~~auditor's~~auditor's report(s), or nine months after the end of the audit period,~~unless a different period is specified in a program-specific audit guide.~~ (whichever is earlier). The reporting package is due the next business day when the due date falls on a Saturday, Sunday, or Federal holiday. Unless restricted by Federal law or regulation, the auditee must make ~~copies of the report~~copies(s) available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

~~(2)~~(2) *Program-specific audit guide available.* When a program-specific audit guide is available, the auditee must electronically submit ~~to the FAC~~the data collection form prepared in

## Unofficial Comparison Version

accordance with § 200.512(b), as applicable to ~~the~~ program-specific audit, ~~and to the Federal Audit Clearinghouse (FAC).~~ The submission must also include the reporting required by the program-specific audit guide.

~~(3)(3) Program-specific audit guide not available.~~ When a program-specific audit guide is not available, the ~~reporting package for a program-specific audit~~ auditee must electronically submit the data collection form prepared in accordance with § 200.512(b) to the FAC. The ~~submission~~ must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, ~~and a corrective action plan as described in paragraph (b)(2) of this section,~~ and the ~~auditor's~~ auditor's report(s) described in paragraph (b)(4) ~~of this section.~~ ~~The data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.~~

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

- (1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);
- (2) 200.504 Frequency of audits through 200.506 Audit costs;
- (3) 200.508 Auditee responsibilities through 200.509 Auditor selection;
- (4) 200.511 Audit findings follow-up;
- (5) 200.512 Report submission, paragraphs (e) through (h);
- (6) 200.513 Responsibilities;
- (7) 200.516 Audit findings through 200.517 Audit documentation;
- (8) 200.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

## Auditees

### § 200.508 Auditee responsibilities.

The auditee must:

(a) ~~Procure or otherwise arrange~~ Arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted ~~when due~~ in accordance with § 200.512.

(b) Prepare ~~appropriate~~ financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings, ~~including preparation of~~. This includes preparing a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor ~~with~~ access to personnel, accounts, books, records, supporting documentation, and any other information ~~as~~ needed for the auditor to perform the audit required by this part.

### § 200.509 Auditor selection.

(a) *Auditor procurement.* ~~In~~ When procuring audit services, the auditee must follow the procurement standards ~~prescribed by the Procurement Standards~~ in §§ 200.317 through 200.327 of subpart D ~~of this part~~ or the FAR (48 CFR part 42), as applicable. ~~In~~ When requesting proposals for audit services, the objectives and scope of the audit must be made clear, and the non-Federal entity must request a copy of the audit ~~organization's~~ organization's peer review

## Unofficial Comparison Version

report, which the auditor ~~is required to~~ must provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make ~~positive~~ efforts to ~~utilize small contract with businesses, minority-owned firms, and women's business enterprises, in procuring audit services~~ as stated in § 200.321, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not ~~also~~ be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year ~~exceeded~~ exceed \$1 million. This restriction applies to the base year used ~~in the preparation of to~~ prepare the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they ~~fully~~ comply ~~fully~~ with the requirements of this part.

### § 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year ~~that is~~ chosen to meet ~~the~~ this part's requirements ~~of this part~~. However, ~~non-Federal entity~~ organization-wide financial statements of the non-Federal entity may also include

## Unofficial Comparison Version

departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements ~~which.~~ ~~The schedule~~ must include the total Federal awards expended as determined in accordance with § 200.502. ~~While not required, the~~ ~~The~~ auditee may choose to provide information requested by Federal ~~awarding~~ agencies ~~and/or~~ pass-through-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may ~~separately~~ list the amount of Federal awards expended for each ~~year of a~~ Federal award ~~year separately.~~ ~~At a minimum, the.~~ ~~The~~ schedule must:

(1) List individual Federal programs by Federal agency ~~using the applicable Assistance Listing number(s).~~ For a cluster of programs, ~~the non-Federal entity must~~ provide the cluster name, ~~a list of~~ individual Federal programs within the cluster ~~of programs,~~ and provide the ~~applicable~~ Federal agency name ~~and the applicable Assistance Listing number(s).~~ For ~~R&D~~ research and development, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision ~~in~~ within the Department of Health and Human Services.

~~(2)~~ (2) For audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational units), identify the recipient of the Federal award.

(3) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.



## Unofficial Comparison Version

(34) Provide total Federal awards expended for each individual Federal program and the Assistance Listings ~~Number~~number or other identifying number when the Assistance Listings information is ~~not available~~unavailable. For a cluster of programs, ~~the auditee must~~ also provide the total for the cluster.

(45) Include the total amount provided to subrecipients from each Federal program.

(56) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This ~~requirement~~ is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(67) Include notes ~~that describe that~~describing the significant accounting policies used in preparing the schedule; and ~~note~~ whether ~~or not~~ the auditee elected to use the ~~10%15 percent~~ de minimis ~~indirect~~ cost rate ~~as covered in~~(see § 200.414-).

### § 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements, which ~~are required~~ ~~to~~must be reported in accordance with GAGAS.

## Unofficial Comparison Version

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior ~~audit's~~ audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior ~~audit's~~ audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) ~~of this section,~~ or no longer valid or not warranting further action in accordance with paragraph (b)(3) ~~of this section.~~

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or ~~were~~ only partially corrected, the summary schedule must describe the reasons for the ~~finding's~~ finding's recurrence ~~and,~~ planned corrective action, and any partial corrective action taken. When the corrective action taken ~~is~~ significantly ~~different~~ differs from the corrective action previously reported in a corrective action plan or ~~in~~ the Federal ~~agency's~~ agency's or pass-through ~~entity's~~ through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC; ~~(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;~~

## Unofficial Comparison Version

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. ~~(iii) A management decision was not issued.~~

~~(c) Corrective action plan.~~ At the completion of the audit, the auditee must prepare, ~~in a document separate from the auditor's findings described in § 200.516,~~ a corrective action plan to address each audit finding included in the auditor's report for the current year ~~auditor's reports.~~ The corrective action plan must ~~be a document separate from the auditor's findings described in § 200.516.~~ The corrective action plan must also provide the name(s) of the contact person(s) responsible for ~~corrective action,~~ the corrective action ~~planned,~~ the corrective action to be taken, and the anticipated completion date. ~~If~~When the auditee does not agree with the audit findings or believes corrective action is not required, ~~then~~the corrective action plan must include ~~ana~~ detailed explanation ~~and specify~~of the reasons.

### § 200.512 Report submission.

(a) General.

### ~~§ 200.512 Report submission.~~

~~(a) General.~~

(1) The audit must be completed and ~~include~~ the data collection form described in paragraph (b) ~~of this section~~ and the reporting package described in paragraph (c) ~~of this section~~). The audit must be submitted within ~~the earlier of~~ 30 calendar days after ~~receipt~~ ~~of receiving~~ the ~~auditor's~~ auditor's report(s), or nine months after the end of the audit period.

## Unofficial Comparison Version

(whichever is earlier). If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) ~~Unless restricted by Federal statutes or regulations, the~~The auditee must make copies available for public inspection; ~~unless restricted by Federal statute or regulation.~~ Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F ~~of this part~~ reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit ~~the~~ required data ~~elements~~ collection form (SF-SAC) described in Appendix X to Part 200, ~~which state whether the audit was completed in accordance with this part and. This form~~ provides information about the auditee, its Federal programs, ~~and the results of the audit, and whether the audit was completed in accordance with this part.~~ The ~~data~~form must include all information ~~available from the audit~~ required by this part that is necessary for Federal agencies to use the audit to ensure ~~the~~ integrity ~~for~~of Federal programs. The ~~form includes~~ data elements and a format ~~that OMB must be approved by OMB, approve, is~~ available from the FAC, and include collections of information from the reporting package described in paragraph (c) ~~of this section.~~

(2) A senior ~~level~~ representative of the auditee (~~e.g., state~~for example, a State controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection ~~that says that the auditee complied with the requirements~~

## Unofficial Comparison Version

~~of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.~~ form stating that the auditee complied with the requirements of this part, including that:

- (2i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form);
- (ii) The reporting package does not include protected personally identifiable information;
- (iii) The information included in its entirety is accurate and complete; and
- (iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

(3) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian ~~tribe~~Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, ~~by excluding.~~ To opt-out, an Indian Tribe or tribal organization must exclude the authorization ~~for the FAC publication in the statement~~ described in paragraph (b)(1) ~~of this section. If this option~~2)(iv). In these instances, the Indian Tribe is ~~exercised, the auditee becomes~~ responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to ~~those~~ Federal awards that the pass-through entity provided. Unless restricted

## Unofficial Comparison Version

by Federal statute or regulation, if the auditee opts not to authorize publication, ~~the Indian Tribe~~ must make copies of the reporting package available for public inspection.

~~(3) Using~~ (4) The auditor must complete the applicable data elements of the data collection form using the information included in the reporting package described in paragraph (c) ~~of this section, the auditor must complete the applicable data elements of the data collection form.~~). The auditor must sign a statement to be included as part of the data collection form ~~that indicates, at a minimum, the~~ stating:

(i) The source of ~~the~~ information included in the data collection form, ~~the auditor's~~;

(ii) The auditor's responsibility for the information, ~~that the~~;

(iii) The data collection form is not a substitute for the reporting package described in paragraph (c) ~~of this section,~~); and ~~that the~~

(iv) The content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the ~~the~~ following:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) ~~Auditor's~~ Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

(d) *Submission to FAC.* The auditee must electronically submit ~~to the FAC~~ the data collection form described in paragraph (b) ~~of this section~~ and the reporting package described in paragraph (c) ~~of this section~~ to the FAC.

## Unofficial Comparison Version

(e) *Requests for management letters issued by the auditor.* ~~In response to requests by a Federal agency or pass-through entity, auditees must~~ Auditees must submit a copy of any management letters issued by the auditor ~~when requested by a Federal agency or pass-through entity.~~

(f) *Report retention requirements.* Auditees must keep ~~one~~ a copy of the data collection form described in paragraph (b) ~~of this section~~ and ~~one~~ a copy of the reporting package described in paragraph (c) ~~of this section~~ on file for three years from the date of submission to the FAC. ~~Copies of audit records must be maintained in accordance with § 200.336.~~

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) ~~of this section~~ and § 200.507(c) to the public, except for Indian ~~tribes~~ Tribes exercising the option in ~~paragraph (b)(2) of this section, 3)~~, and maintain a ~~data based~~ database of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that ~~the FAC knows~~ have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such a manner as may be approved by OMB.

### Federal Agencies

#### § 200.513 Responsibilities.

~~(a)~~

~~(1)~~ *Cognizant agency for audit responsibilities.*

(1) A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The ~~designated~~ cognizant agency for audit must be the

## Unofficial Comparison Version

Federal ~~awarding~~ agency that provides the ~~predominant~~largest amount of ~~funding directly~~ (direct funding) to a non-Federal entity (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal ~~entity's~~entity's fiscal years ending in 2019; and every fifth year ~~thereafter~~ after that.

(3) Notwithstanding ~~the manner in which~~how audit cognizance is determined, a Federal ~~awarding~~ agency ~~with cognizance for an auditee~~ may reassign cognizance to another Federal ~~awarding~~ agency that provides substantial funding ~~and~~to an auditee if it agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must ~~provide notice of~~notify the change to the FAC, the auditee, and, if known, the auditor. ~~The cognizant agency for audit must:~~

(4) The cognizant agency for audit must:

(i) Provide technical audit advice and ~~liaison~~assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors; and provide the results to other interested organizations.

(iii) Cooperate and ~~provide~~support to the Federal agency designated by OMB to lead a ~~governmentwide project to determine~~government-wide analysis to assess the quality of single audits ~~by~~. The government-wide analysis may rely on the current and ongoing quality control



## Unofficial Comparison Version

review work performed by Federal agencies, State auditors, and professional audit associations. This government-wide audit analysis must be performed at an interval determined by OMB, and the results must be posted publicly. In providing a reliable estimatesupport to the government-wide analysis, a Federal agency must provide the following:

(A) An assessment of the extent ~~thatto~~ which single audits conform to ~~applicablethe~~ requirements, standards, and procedures of this part; and ~~to make recommendations~~

(B) Recommendations to address ~~noted~~ audit quality issues, including recommendations for any changes to ~~applicablethis part's~~ 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 agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public..~~

(~~iii~~iv) Promptly inform ~~other affected Federal agencies and~~ the appropriate Federal law enforcement officials and impacted Federal agencies of any direct reporting by the auditee or its auditor required by GAGAS, Federal statute, or ~~statutes and regulations. regulation.~~

(~~iv~~v) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate ~~state~~State licensing agencies and professional bodies.

(~~v~~vi) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective

## Unofficial Comparison Version

action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate ~~state~~State licensing agencies and professional bodies for disciplinary action.

(~~vii~~vii) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon, rather than duplicate, audits performed in accordance with this part.

(~~viii~~viii) Coordinate a management decision for cross-cutting audit findings (~~see in § 200.1 of this part~~) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

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

(~~ix~~ix) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(~~x~~x) Provide advice to auditees as to how to handle changes in fiscal ~~years~~year.

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the

## Unofficial Comparison Version

new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice ~~and assistance~~ to auditees and auditors ~~as requested~~.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

~~(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.~~

(c) *Awarding Federal ~~awarding~~ agency responsibilities.* ~~The Federal awarding~~ In addition to all other requirements of this part, the awarding Federal agency must ~~perform the following for the Federal awards it makes (See also the requirements of § 200.211):~~:

(1) Ensure that audits are completed, and reports are received in a timely manner ~~and~~ in accordance with the requirements of this part.

(2) Provide technical advice and ~~counsel~~ assistance to auditees and auditors ~~as requested~~.

(3) Follow-up on audit findings to ensure that ~~the recipient takes non-Federal entities take~~ appropriate and timely corrective action. ~~As part of audit follow-up, the Federal awarding agency must:~~ Follow-up includes:

(i) ~~Issue~~ Issuing a management decision ~~as prescribed~~ in accordance with § 200.521;

(ii) ~~Monitor the recipient taking appropriate and timely~~ Monitoring the non-Federal entity's progress implementing a corrective action;

(iii) ~~Use~~ Using a cooperative audit resolution ~~mechanisms (see the definition of cooperative audit resolution in § 200.1 of this part)~~ approach to improve Federal program outcomes through better audit resolution, follow-up, and corrective action~~;~~, which means the use

## Unofficial Comparison Version

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

~~(iv) Develop~~(A) A strong commitment by Federal agency and non-Federal entity leadership to Federal program integrity;

(B) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; non-Federal entities and their auditors working cooperatively with Federal agencies;

(C) A focus on current conditions and corrective action going forward;

(D) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(E) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

(iv) Tracking the effectiveness of the Federal agency's follow-up processes, the effectiveness of single audits in improving non-Federal entity accountability, and the use of single audits in making Federal award decisions. The Federal agency should develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal ~~agency's~~agency's process to follow-up on audit findings ~~and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.~~.

## Unofficial Comparison Version

(4) Provide OMB ~~with~~ annual updates to the compliance supplement ~~and work~~. These updates include ~~working~~ with OMB to ensure that the compliance supplement focuses the auditor ~~to test on~~ testing the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit ~~finding~~ findings for which the Federal ~~awarding agency will take sanctions~~ agency with take action in accordance with § 200.505. Federal agencies are encouraged to engage with external audit stakeholders and the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal ~~awarding agency who~~. The accountable official must be:

(i) Responsible for ensuring that the Federal agency fulfills ~~all~~ the requirements ~~of paragraph (c)~~ of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) ~~Held accountable to improve~~ Accountable for improving the effectiveness of the Federal agency's single audit ~~process based upon metrics as described~~ processes in accordance with paragraph (c)(3)(iv) ~~of this section~~.

(iii) Responsible for designating the Federal ~~agency's~~ agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison ~~who~~. The liaison must:

(i) Serve as the Federal ~~awarding agency's management~~ agency's point of contact for the single audit process ~~both~~ within and outside the Federal Government.

## Unofficial Comparison Version

(ii) Promote interagency coordination, consistency, and information sharing ~~in areas such as. This includes~~ coordinating audit follow-up~~;~~, identifying ~~higher~~high-risk non-Federal entities~~;~~, providing input on single audit and follow-up policy~~;~~, enhancing the utility of the FAC~~;~~, and ~~studying~~identifying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal ~~awarding agency's~~agency's program management personnel related to the single audit process.

(iv) Promote the Federal ~~awarding agency's~~agency's use of a cooperative audit resolution ~~mechanisms~~approach as described in paragraph (c)(3)(iii).

(v) Coordinate the Federal ~~awarding agency's activities to ensure appropriate and timely~~ agency's audit follow-up ~~and~~processes and ensure non-Federal entities implement corrective ~~action~~actions for audit findings.

(vi) ~~Organize~~Manage the Federal agency's audit follow-up processes for the cognizant agency for ~~audit's follow-up on~~an audit if there are cross-cutting audit findings ~~that affect the Federal programs~~. Cross-cutting audit findings means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal ~~awarding agency~~ or pass-through entity).

(vii) Ensure the Federal ~~awarding~~agency provides OMB with annual updates ~~of~~to the compliance supplement ~~to OMB~~consistent with the compliance supplement preparation guide.

(viii) Support the ~~mission of the Federal~~ mission of the Federal ~~awarding agency's~~agency's single audit accountable ~~official's mission~~official and coordinate with the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC).

## Auditors

### § 200.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must also cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during ~~such~~the audit period,~~provided that each such.~~ In these instances, the audit must ~~encompass~~include the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the auditee's financial statements ~~of the auditee~~ are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the ~~auditee's~~auditee's financial statements as a whole.

(c) *Internal control.*

(1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

## Unofficial Comparison Version

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4)~~(4) of this section,~~ the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for ~~the~~ assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i)~~(i) of this section.~~

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.*

(1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.



## Unofficial Comparison Version

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements, and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

~~(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the~~

~~(e) Audit follow-up.~~ (4) The compliance testing must include tests of transactions and other auditing procedures necessary to provide the auditor with sufficient audit evidence to support an opinion on compliance.

~~(e) Audit follow-up.~~ The auditor must follow up on prior audit findings, perform regardless of whether a prior audit finding is related to a major program in the current year. Audit follow-up includes performing procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511(b), and report, as a current year audit finding, when. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The, the auditor must perform audit follow-up procedures regardless of

~~whether report this condition as a prior current-year audit finding relates to a major program in the current year.~~

(f) *Data collection form.* As required in § 200.512(b)(~~34~~), the auditor must complete and sign specified sections of the data collection form.

**§ 200.515 Audit reporting.**

The ~~auditor's~~ auditor's report(s) may be in the form of either combined or separate reports ~~and~~. It may be organized differently from the manner presented in this section. The ~~auditor's~~ auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) ~~Financial statements. The auditor must determine and provide an~~ An opinion (or disclaimer of opinion) ~~from the auditor determining~~ whether the financial ~~statements~~ statement(s) of the auditee ~~are~~ is presented fairly in all ~~materials~~ material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by ~~state~~ State law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of ~~testing of~~ internal control and compliance ~~testing~~ and the results of the tests, ~~and, where~~. Where applicable,

## Unofficial Comparison Version

~~it will~~ the report must refer to the separate schedule of findings and questioned costs described in paragraph (d) ~~of this section~~.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance; ~~and~~ include an opinion (or disclaimer of opinion) as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards ~~which~~ that could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) ~~of this section~~.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the ~~auditor's~~ auditor's results, which must include:

(i) The type of report the auditor issued ~~on whether the financial statements audited were prepared in accordance with GAAP (i.e., (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);~~) on whether the audited financial statements were prepared in accordance with GAAP;

(ii) ~~Where applicable, a~~ A statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements; ~~if applicable;~~

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) ~~Where applicable, a~~ A statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit, ~~if applicable;~~

## Unofficial Comparison Version

(v) The type of report the auditor issued ~~on compliance for major programs (i.e., (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);~~) on compliance for major programs;

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the ~~Schedule~~ schedule of ~~Expenditures~~ expenditures of Federal Awards is required for a cluster of programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under-§ 200.520.

(2) Findings relating to the financial statements ~~which are~~ required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a~~)-~~) and be reported in the following manner:

(i) Audit findings (~~e.g., for example,~~ internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

## Unofficial Comparison Version

(ii) Audit findings that relate to both the financial statements (~~paragraph (d)(2)) and Federal awards, as reported under paragraphs (d)(2) and (paragraph (d)(3) of this section, respectively,))~~ must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form ~~with a~~ reference ~~to~~ a detailed reporting in the other section ~~of the schedule.~~.

(e) Nothing in this part precludes combining ~~of the audit~~ reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and ~~appendix X to this part.~~ Appendix X.

### § 200.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as ~~an~~ audit ~~findings~~ finding in ~~the~~ schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs ~~and significant instances of abuse relating to major programs.~~. The ~~auditor's~~ auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the ~~Compliance Supplement.~~ compliance supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The ~~auditor's~~ auditor's determination of whether ~~a~~ noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit

## Unofficial Comparison Version

finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

~~(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when~~(3) Known questioned costs when either known or likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. ~~In~~When reporting questioned costs, the auditor must include information to provide proper perspective for ~~judging~~evaluating the prevalence and consequences of the questioned costs.

(4) Known questioned costs ~~that are~~ greater than \$25,000 for a Federal program ~~which~~that is not audited as a major program. Except for audit follow-up, the auditor is not required ~~under this part~~ to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (~~e.g., for example,~~ as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, ~~then~~the auditor must report this as an audit finding.

(5) The circumstances concerning why the ~~auditor's~~auditor's report on compliance for each major program is other than an unmodified opinion~~;~~. ~~This must be included unless such~~the

Unofficial Comparison Version

circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs ~~for Federal awards.~~.

(6) Known or likely fraud affecting a Federal award, unless ~~such~~the fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs ~~for Federal awards.~~. This paragraph does not require the auditor to ~~report~~publicly report information ~~which~~that could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the ~~auditor's~~auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented ~~in~~with sufficient detail and clarity for ~~both~~ the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies ~~and~~or pass-through-through entities to arrive at a management decision. ~~The~~As applicable, the following ~~specific~~information must be included, ~~as applicable,~~ in audit findings:

(1) ~~The~~ Federal program and specific Federal award identification, including the Assistance Listings title and number, Federal award identification number and year, ~~the~~ name of ~~the~~ Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is ~~not~~ ~~available~~unavailable, the auditor must provide the best information available to describe the Federal award.

## Unofficial Comparison Version

(2) The criteria or specific requirement ~~upon which~~for the audit finding ~~is based,~~  
~~including~~(for example, the specific Federal ~~statutes, regulations~~statute, regulation, or ~~the~~  
~~term~~term and ~~conditions~~condition of the Federal ~~awards.~~Criteriaaward). The criteria or specific  
requirement provides a context for evaluating evidence and understanding findings. As a result,  
the criteria should generally identify the required or desired state or expectation with respect to  
the program or operation. ~~Criteria provide a context for evaluating evidence and understanding~~  
~~findings.~~

(3) The condition found, including facts that support the deficiency identified in the audit  
finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the  
factors responsible for the difference between the situation that exists (condition) and the  
required or desired state (criteria), which may also serve as a basis for recommendations for  
corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and  
Federal agency, or pass-through entity ~~in the case of a subrecipient,~~ to permit them to determine  
the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or  
potential effect should provide a clear, logical link to establish the impact or potential impact of  
the difference between the condition and the criteria.

(6) ~~Identification~~The identification of known questioned costs ~~and how they were~~  
~~computed. Known questioned costs must be identified,~~ by applicable Assistance ListingsListing  
number(s) and ~~applicable~~Federal award identification number(s)-), and how these questioned  
costs were computed.



## Unofficial Comparison Version

(7) When there are known questioned costs but the dollar amount is undetermined or not reported, a description of why the dollar amount was undetermined or otherwise could not be reported.

(8) Information to provide proper perspective for ~~judging~~evaluating the prevalence and consequences of the audit ~~findings, such as~~finding. For example, whether the audit ~~findings represent~~finding represents an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. ~~The auditor~~In addition, the audit should ~~report~~indicate whether the sampling was a statistically valid sample.

~~(8) Identification~~(9) The identification of whether the audit finding ~~was~~is a repeat of a finding in the immediately prior audit ~~and if so any~~. The audit must identify the applicable prior year audit finding numbers ~~in these instances~~.

(910) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

~~(1011)~~ Views of ~~the~~ responsible officials of the auditee.

(c) *Reference numbers*. Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission ~~required by § 200.512(b) to allow for easy referencing of the audit findings during follow-up.~~(see § 200.512(b)).

### § 200.517 Audit documentation.

(a) *Retention of audit documentation*. The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the ~~auditor's~~auditor's report(s)

to the auditee, ~~unless the auditor is notified in writing by the~~. The cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity ~~to~~ may extend the retention period by providing written notification to the auditor. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to the destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

#### **§ 200.518 Major program determination.**

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must ~~include consideration of~~ consider current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process described in paragraphs (b) through (h) ~~of this section~~ below must be followed.

(b) *Step one.*

(1) The auditor must identify and label the larger Federal programs, ~~which must be labeled as~~ Type A programs. Type A programs are defined as Federal programs with Federal

Unofficial Comparison Version

awards expended during the audit period exceeding the levels outlined in the following table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to or exceed <del>\$750</del> 1,000,000 but less than or equal to \$25 million	\$750,000.
Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
Exceed \$20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) ~~of this section~~ must be labeled Type B programs.

(3) ~~The inclusion of~~Including large ~~loan~~loans and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. ~~When a~~A Federal program providing loans is considered a large loan program when it exceeds four times the largest non-loan program ~~it is considered a~~. For these large loan ~~program, and~~programs, the auditor must consider ~~this~~the Federal program as a Type A program and exclude its values in determining other Type A

## Unofficial Comparison Version

programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For ~~the purposes of~~ this paragraph, a program is only considered ~~to be~~ a Federal program providing loans if the value of Federal awards expended for loans within the program comprises ~~fifty~~50 percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program, and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits ~~permitted under~~(see § 200.504-), the determination of Type A and Type B programs must be based ~~upon~~on the Federal awards expended during the two-year ~~audit~~ period.

(c) *Step two.*

(1) The auditor must identify Type A programs ~~which~~that are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and ~~therefore~~ preclude the program from being low--risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must ~~not~~ have ~~not~~ had:

(i) Internal control deficiencies ~~which~~that were identified as material weaknesses in the ~~auditor's~~auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the ~~auditor's~~auditor's report on major programs as required under § 200.515(c); or

## Unofficial Comparison Version

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) ~~of this section,~~, OMB may approve a Federal ~~awarding agency's~~ agency request that a Type A program ~~may~~ not be considered low-risk for a ~~certain~~ specific recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year ~~at~~ for a particular recipient ~~to allow~~ for the Federal ~~awarding~~ agency to comply with 31 U.S.C. 3515. The Federal ~~awarding~~ agency must notify the ~~recipient~~ auditee and, if known, the auditor of ~~OMB's~~ OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.*

(1) The auditor must identify high-risk Type B programs ~~which are high-risk~~ using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one-fourth ~~of~~ the number of low-risk Type A programs identified as low-risk under ~~Step 2 (paragraph (c) of this section)~~ step two. Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would ~~seldom~~ rarely cause a Type B program to be considered high-risk. When identifying which Type B programs to ~~risk-assess~~ for risk, the auditor is encouraged to use an approach ~~which~~ that provides an opportunity for different high-risk Type B programs to be audited as major programs over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B

## Unofficial Comparison Version

programs that exceed ~~twenty-five~~25 percent (0.25) of the Type A threshold determined in ~~Step 4~~  
~~(paragraph (b) of this section)~~-step one.

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low--risk under step two ~~(paragraph (e)(1) of this section)~~-.

(2) All Type B programs identified as high-risk under step three ~~(paragraph (d) of this section)~~-.

(3) ~~Such additional~~Additional programs as ~~may be~~necessary to comply with the percentage of coverage rule ~~discussed~~described in paragraph (f) ~~of this section)~~-. This rule may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* ~~If~~When the auditee meets the criteria in § 200.520, the auditor ~~need~~only needs to audit the major programs identified in ~~Step 4~~~~(paragraphs (e)(1) and (2) of this section)~~ and such additional Federal programs with Federal awards expended that, in ~~the~~ aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in ~~Step 4~~~~(paragraphs (e)(1) and (2) of this section)~~ and such additional Federal programs with Federal awards expended that, in ~~the~~ aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis ~~process~~used ~~in~~for determining major programs.

## Unofficial Comparison Version

(h) ~~Auditor's~~ Auditor's judgment. ~~When the major program determination was performed and documented in accordance with this Subpart, the auditor's~~ The auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. ~~when the determination was performed and documented in accordance with this part.~~ Challenges by a Federal ~~agencies and~~ agency or pass-through ~~entities~~ entity must only be for clearly improper use of the requirements in this part. However, a Federal ~~agencies and~~ agency or pass-through ~~entities~~ entity may provide auditors guidance about the risk of a particular Federal program ~~and the~~. The auditor must consider this guidance in determining major programs in audits not yet completed.

### § 200.519 Criteria for Federal program risk.

(a) *General.* The ~~auditor's~~ auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as ~~those~~ described in paragraphs (b), (c), and (d) ~~of this section~~, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.*

(1) Weaknesses in internal control over Federal programs would indicate higher risk. ~~Consideration~~ Therefore, consideration should be given to the control environment over Federal programs ~~and such~~. This includes considering factors such as the expectation of ~~management's~~ management's adherence to Federal statutes, regulations, and the terms and

## Unofficial Comparison Version

conditions of Federal awards, and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (~~e.g., for example~~, one college campus) or pervasive throughout the entity.

(ii) ~~When significant parts of a Federal program are passed through to subrecipients, a~~ weak system for monitoring subrecipients would indicate higher risk. ~~when significant parts of a Federal program are passed to subrecipients through subawards.~~

(2) Prior audit findings would indicate higher risk, ~~particularly~~ especially when the situations identified in the audit findings could ~~have a significant~~ significantly impact ~~on a~~ Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than ~~Federal programs~~ those recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.*

(1) ~~Oversight~~ The oversight exercised by Federal agencies or pass-through-through entities ~~could~~ may be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) ~~Federal agencies, with~~ With the concurrence of OMB, a Federal agency may identify Federal programs that are higher risk. OMB will ~~provide this identification~~ identify these Federal programs in the compliance supplement.



(d) *Inherent risk of the Federal program.*

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be ~~of~~ higher risk. Federal programs primarily involving staff payroll costs may ~~have~~ **be at** high risk for noncompliance with **the** requirements of § 200.430, but otherwise be at low risk.

(2) The phase of a Federal program in its ~~life-cycle~~ **lifecycle** at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its ~~life-cycle~~ **lifecycle** at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to **the** start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

**§ 200.520 Criteria for a low-risk auditee.**

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

## Unofficial Comparison Version

(a) Single audits were performed on an annual basis in accordance with the provisions of this ~~Subpart~~subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The ~~auditor's opinion on~~auditor issued unmodified opinions on both the schedule of expenditures of Federal awards and whether the financial statements were prepared in accordance with GAAP, (or a basis of accounting required by ~~state~~State law, ~~and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.~~).

(c) ~~There were no deficiencies in~~No internal control ~~which~~deficiencies were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the ~~auditee's~~auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the ~~auditor's~~auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the ~~auditor's~~auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent (.05) of the total Federal awards expended for a Type A program during the audit period.

### Management Decisions

§ 200.521 Management ~~decision~~decisions.

## Unofficial Comparison Version

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* ~~As provided in § 200.513(a)(3)(vii), the~~The cognizant agency for audit ~~must be~~is responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. ~~As provided in (see § 200.513(e)(3)(i), a Federal )~~(4)(vii)). The awarding Federal agency is responsible for issuing a management decision for audit findings that ~~relate to affect the~~ Federal awards it makes to a non-Federal ~~entities~~-entity (see § 200.513(c)(3)(i)).

(c) *Pass-through entity.* ~~As provided in § 200.332(d), the~~The pass-through entity ~~must be~~is responsible for issuing a management decision for audit findings that ~~relate to Federal awards~~affect subawards it ~~makes~~issues to subrecipients- under a Federal award (see § 200.332(d)).

(d) *Time requirements.* The Federal ~~awarding~~agency or pass-through entity responsible for issuing a management decision must do so within six months of the FAC's acceptance of the

## Unofficial Comparison Version

audit report ~~by the FAC~~. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers*. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

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

#### **(a) *General Requirements***.

(1) In developing a notice of funding opportunity (NOFO), Federal agencies must:

(i) Be concise and use plain language per the guidance at *PlainLanguage.gov* wherever possible.

(ii) For electronic NOFOs and other information about them, comply with [Section 508 of the Rehabilitation Act of 1973 \(29 U.S.C. 794d\)](#).

~~The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.~~

~~A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the~~

## Unofficial Comparison Version

~~announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.~~

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

~~The sections of the full text of the announcement are described in the following paragraphs.~~

### **~~A. Program Description—Required~~**

~~(2) Federal agencies may:~~

~~(i) Link to standard content to include required information rather than including the full language in the NOFO. The NOFO should make clear if linked information is critical—for example, standard terms and conditions, administrative and national policy requirements, and standard templates.~~

~~(ii) Include links to relevant regulations and other sources.~~

~~(iii) Use cross-references between the sections, including hyperlinks in electronic versions.~~

## Unofficial Comparison Version

(3) *Required Consistency.* Potential applicants must be able to find similar information across all Federal NOFOs. To that end, Federal agencies must include the same or similar section headings and a table of contents with at least these sections:

(i) ~~Basic~~ ~~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 Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, 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—~~

- (ii) Eligibility
- (iii) Program Description
- (iv) Application Contents and Format
- (v) Submission Requirements and Deadlines
- (vi) Application Review Information

## Unofficial Comparison Version

(vii) Award Notices

(viii) Post-Award Requirements and Administration

**(b) *Required Sections and Information.***

As required below, the Federal agency must include the following sections and information in the text of a NOFO and a table of contents.

**(1) *Basic Information.***

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. ~~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.~~

(i) This section ~~also must indicate~~ include the ~~type(s)~~ following:

(A) Federal Agency Name.

(B) Funding Opportunity Title.

(C) Announcement Type (whether the funding opportunity is the initial announcement or a modification of ~~assistance instrument (e.g., grant, cooperative agreement)~~ a previously announced opportunity).

## Unofficial Comparison Version

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

(E) Assistance Listing Number(s).

(F) Funding Details. The total amount of funding ~~that may be awarded if the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range.~~

(G) Key Dates. Key dates include due dates for submitting ~~applications are successful or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If cooperative agreements may be awarded, this section either possible, the Federal agency should describe provide an anticipated award date. If the “substantial involvement” that NOFO is evaluated on a “rolling” basis, the Federal awarding agency expects to have or should reference where the potential provide an estimate of the time needed to process an application and notify the applicant can find that information (e.g., in the funding opportunity of the Federal agency's decision.~~

(H) Executive Summary. A brief ~~description in Section A. or Federal award administration~~ that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible recipients. The text of the executive summary should not exceed 500 words

(I) Agency contact ~~information in Section D. If procurement contracts also may be awarded, this must be stated.~~



## Unofficial Comparison Version

~~C.~~(ii) This section could include the following:

(A) The amount of funding per Federal award, on average, experienced in previous years.

(B) Whether this is a new program or a one-time initiative.

(2) **Eligibility Information.**

This section addresses the ~~considerations or~~ factors that determine applicant or application eligibility.

(i) *Eligible Applicants.* This ~~includes~~ subsection must identify the following:

(A) A complete and specific list of entity types eligible to apply.

(B) Any additional restrictions on eligibility ~~of particular types beyond the type of applicant organizations, any~~ entity.

(C) Eligibility factors ~~affecting the eligibility of~~ for the principal investigator or project director, ~~and~~ if any ~~criteria~~.

(D) Criteria that would make any particular projects ineligible. ~~Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an~~

(E) A reference to any funding restriction elsewhere in the NOFO that could affect an applicant's or project's eligibility.

(F) A reference or link to any other factors that would disqualify an applicant or application ~~may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:~~

## Unofficial Comparison Version

~~1. Eligible Applicants—Required. Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross reference to its description in Section D.6.~~

~~2. Cost Sharing or Matching—Required. Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or~~

## Unofficial Comparison Version

~~regulation, as described in § 200.306 of this Part. This section should refer to the appropriate portion(s) of section D, stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.~~

~~3. Other—Required, if applicable. If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as “, such as the responsiveness” criteria, “go no go” criteria, “threshold” criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any criteria in 6a.~~

(G) Any limit on the number of applications an applicant may submit under the announcement ~~and make~~. Make clear whether the limitation is on the submitting organization, individual investigator ~~or~~ program director, or both.

(ii) *Cost Sharing*. This subsection must state:

(A) Whether there is required cost sharing. This statement must be clear that not committing to the required cost sharing will make the application ineligible. If cost sharing is not required, the announcement must say so.

(B) An explanation of the calculation for the required cost sharing. Required cost sharing may be a certain percentage or amount or in the form of contributions of specified items or activities (*for example*, provision of equipment).

## Unofficial Comparison Version

(C) Any restrictions on the types of cost, such as in-kind contributions, acceptable as cost sharing.

(D) Any requirement to commit to cost sharing. This section should refer to the appropriate portions of section D stating any pre-award requirements for the submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

### (3) *Program Description.*

This section contains the full program description of the funding opportunity. ~~This section should also address any~~

(i) This section must include the following:

(A) The general purpose of the funding and what it is expected to achieve for the public good.

(B) The Federal agency's funding priorities or focus areas, if any.

(C) Program goals and objectives.

(D) A description of how the award will contribute to achieving the program's goals and objectives.

(E) The expected performance goals, indicators, targets, baseline data, data collection, and other outcomes the Federal agency expects recipients to achieve.

(F) For cooperative agreements, the “substantial involvement” that the Federal agency expects to have or should reference where the potential applicant can find that information.

(G) Information on program specific unallowable costs so that the applicant can develop an application and budget consistent with program requirements and any limits on indirect costs.

## Unofficial Comparison Version

(H) Any eligibility criteria for beneficiaries or ~~for~~ program participants other than Federal award recipients.

~~D.~~(I) Citations for authorizing statutes and regulations for the funding opportunity.

(ii) This section could also include the following:

(A) Any program history, such as whether it is a new program or a new or changed area of program emphasis.

(B) Examples of successful projects funded in the past.

(C) Other information the Federal agency finds necessary.

(4) ***Application Contents and ~~Submission Information Format.~~***

~~1. Address to Request Application Package—Required. Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.~~

~~2. Content and Form of Application Submission—Required. This section—~~This subsection must identify the required content of an application and the forms or formats ~~that~~ an applicant must use ~~to submit it.~~ If any requirements are stated elsewhere ~~because they are general requirements that apply to multiple programs or funding opportunities,~~ this section should refer

## Unofficial Comparison Version

to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

(i) This ~~section should~~ subsection must specifically address content and form or format requirements for:

i.(A) Pre-applications, letters of intent, or white papers are required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications if they apply.

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

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

iv.(B) The application as a whole.

(C) Component pieces of the application.

(D) Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. ~~This~~ For example, this could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–~~4370h~~); et seq.).

## Unofficial Comparison Version

(ii) Within each of the categories above, this subsection must include, where relevant:

(A) Limitations on page numbers.

(B) Formatting requirements, including font and font size, margins, paper size, and color limitations.

(C) Any requirements for file naming, file size limitations, or file format such as PDF.

(D) The number of copies required if paper submissions are allowed.

(E) The sequence required for application sections or components.

(F) Signature requirements, including those for electronic submissions.

(G) Any requirements for third-party information such as references, letters of support, or letters of commitment to the project or to contribute to cost sharing.

(H) A reference to any requirements in Section 6 to provide documentation to support an eligibility determination, such as proof of 501(c)(3-) status or an authorizing tribal resolution.

(I) Instructions needed to develop the narrative portions of the application. Include any requirements for its order, format, or required headings.

(J) If applicable, the need to identify proprietary information. Include how to do so and how the Federal agency will handle it.

### ***(5) Submission Requirements and Deadlines.***

(i) *Address to Request Application Package.* This subsection must include the following:

(A) How to get application forms, kits, or other materials needed to apply. If the announcement contains everything needed, this section needs only say so. If not, the guidance must include:

(1) An Internet address where the materials can be accessed.

## Unofficial Comparison Version

(2) An email address.

(3) A U.S. Postal Service mailing address.

(4) Telephone number.

(5) Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, or other appropriate telecommunication relay service.

(ii) *Unique entity identifier and System for Award Management (SAM)*—

~~Required.~~ gov). This ~~paragraph~~ subsection must state ~~clearly that each~~ the requirements for unique entity identifiers and registration in SAM.gov. It must include the following:

(A) 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~~ must:

(i) Be registered in SAM.gov before submitting its application;

(ii) Provide a valid unique entity identifier in its application; and

(iii) Continue to maintain an active SAM-registration in SAM.gov with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal 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.~~ agency.



## Unofficial Comparison Version

(B) If individuals are eligible to apply, they are exempt from this requirement under 2 CFR 25.110(b).

(C) If the Federal agency exempts any applicants from this requirement under 2 CFR 25.110(c) or (d), a statement to that effect.

(iii) *Submission Instructions*. This subsection addresses how the applicant will submit the application. It must include the following:

(A) Actions needed prior to applying:

(1) Instructions on any registrations required to access electronic submission systems or links to them. Where possible, provide the expected time frames needed to complete the registration process.

(B) The methods for submitting the application:

(1) Whether the applicant must submit in electronic or paper form or whether the applicant has an option. Applicants should not be required to submit in more than one format.

(2) Instructions on how to submit electronically or links to them. Must include the URL to the electronic submission system and information on or links to information about the system or software requirements needed by the system.

(3) If the Federal agency allows paper submissions, the process used to approve this option if it is not automatically allowed.

~~(4)~~ If the Federal agency allows paper submissions, the method for submitting the application. This information must include a postal address and “care of” information needed to route the application to the appropriate person, office, or email address, if the Federal agency allows such submissions.

## Unofficial Comparison Version

(C) If applicable, this subsection also must say how applicants must submit pre-applications, letters of intent, third-party information, or other information required before the award. It must include the following:

(1) Instructions on how to submit electronically or links to them.

(2) Whether the applicant must submit in electronic or paper form or whether the applicant has an option.

(3) If the Federal agency allows paper submissions, the method for submitting the required information. This information must include a postal address and “care of” information needed to route the application to the appropriate person, office, or email address.

(D) This subsection must also include what to do in the event of system problems and a point of contact who will be available if the applicant experiences technical difficulties.

(iv) *Submission Dates and Times*—~~Required. Announcements.~~ This subsection must ~~identify~~include due dates and times for all submissions. If they are different for electronic and paper submissions, be clear about the differences. This includes ~~not only~~the ~~full~~following:

(A) Full applications ~~but also any.~~

(B) Any preliminary submissions ~~(e.g., such as letters of intent, white papers, or pre-applications).~~ ~~It also includes any.~~

(C) Any other submissions ~~of information~~required before Federal award ~~that are~~separate from the full application.

(D) If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. ~~Note that the information~~

## Unofficial Comparison Version

~~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 of this part).~~

~~5.(v) Intergovernmental Review—Required, if applicable. If.~~ This subsection must include the following:

~~(A) Whether or not 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.’.~~

~~6. Funding Restrictions—Required. Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.~~

~~7. Other Submission Requirements—Required. This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.~~

## Unofficial Comparison Version

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

~~E.(B) If it is applicable, include the following:~~

~~(1) A short description of this requirement.~~

~~(2) Where applicants can find their State’s Single Point of Contact, learn whether their State has an intergovernmental review process, and if so, get information on their State’s process. The list of SPOCs is on the Office of Management and Budget's website.~~

~~(6) *Application Review Information*.~~

~~**1. Criteria—Required.**(i) *Responsiveness Review*. This section ~~must address~~ includes information on the criteria that ~~the Federal awarding~~ make an application or project ineligible. These are sometimes referred to as “responsiveness” criteria, “go-no-go” criteria, or “threshold” criteria. Federal agencies may change the title of this subsection as appropriate. This subsection must include the following:~~

~~(A) A brief understanding of the Federal agency responsiveness review process.~~

~~(B) A list and enough detail to understand the criteria or disqualifying factors to be reviewed.~~

## Unofficial Comparison Version

(C) A reference to the regulation or requirement that describes the restriction, if applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, say so.

(ii) *Review Criteria.* This section must address the review criteria that the Federal agency will use to evaluate applications. ~~This includes the~~ for merit. This information includes the merit and other review criteria ~~that~~ evaluators will use to judge applications, including any statutory, regulatory, or other preferences ~~(e.g., minority status or Native American tribal preferences)~~ that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed.-

The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize ~~fairness of the process.~~ ~~The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).~~the fairness of the process.

⌘(A) This subsection must include the following:

- (1) A clear description of each criterion and sub-criterion used.
- (2) If criteria vary in importance, the relative percentages, weights, or other means used to distinguish between them.

## Unofficial Comparison Version

(3) For statutory, regulatory, or other preferences, an explanation of those preferences with an explicit indication of their effect, for example, if they result in additional points being assigned.

~~(4) How an applicant's proposed cost sharing will be considered in the review process (as opposed to being if it is not an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., 2b. For example, to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague. Do not include statements that cost sharing is encouraged, without clarification as to providing clarity about what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on.~~

(5) The relevant information if the Federal agency permits applicants to nominate reviewers of their applications or suggest those, they feel may be inappropriate due to a conflict of interest.

(B) This section could include the following:

~~(1) The types of cost (e.g., in-kind contributions) that are acceptable as cost sharing, people responsible for evaluation against the merit criteria. For example, peers external to the Federal agency or Federal agency personnel.~~

~~(2-) The number of people on an evaluation panel and how it operates, how reviewers are selected, reviewer qualifications, and how conflicts of interest are avoided.~~

~~(iii) Review and Selection Process—Required.~~

## Unofficial Comparison Version

This section may vary in the level of detail provided. ~~The announcement~~

(A) It must ~~list any~~ include the following:

(1) Any program policy ~~or other~~, factors, or elements, ~~other than merit criteria~~, that the selecting official may use in selecting applications for ~~Federal~~the award ~~(e.g., For example, geographical dispersion, program balance, or diversity)~~. ~~The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who.~~

(2) A brief description of the merit review process, including how the Federal agency uses merit review outcomes in final decision-making. For example, whether they are advisory only.

(B) It could also include the following:

(1) Who makes the final selections for ~~Federal~~awards. ~~If there is a~~

(2) Any multi-phase review ~~process (e.g., methods. For example, an external panel advising internal Federal awarding agency personnel who makethat advises on, makes, or approves final recommendations to the deciding official)~~, ~~the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding.~~

(iv) *Risk Review.*

(A) This section must include the following:

## Unofficial Comparison Version

(1) A brief description of the factors used for the Federal agency's risk review as required by § 200.206.

(2) If the Federal agency ~~is responsible for compliance with~~ expects that any ~~Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d)~~

~~In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.~~

~~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~~the NOFO will be more than the simplified acquisition threshold ~~on any Federal award under a notice of funding opportunity may include, over the~~during its period of performance, ~~this section must also inform applicants:~~ include the following information:

(i-) That ~~the Federal awarding agency, prior to~~before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, ~~is required to~~the Federal agency must review and consider any information about the applicant that is in the ~~designated integrity and performance system accessible through~~responsibility/qualification records available in SAM-~~(currently FAPHS)~~.gov (see 41 U.S.C. 2313);).

(ii-) That an applicant,~~at its option, may review information in the designated integrity and performance systems accessible through SAM~~ can review and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated ~~integrity and performance system accessible through SAM~~; in the responsibility/qualification records available in SAM.gov.



## Unofficial Comparison Version

~~(iii-) That before making decisions in the risk review required by § 200.206 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.~~

~~4. Anticipated Announcement and Federal Award Dates—Optional. This section is intended to provide applicants along with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include available in the responsibility/qualification records in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.SAM.gov.~~

### ~~F. Federal Award Administration Information~~

#### ~~1. Federal(7) Award Notices—Required.-.~~

This section must address what a successful applicant can expect to receive following selection.

(i) It must include the following:

(A) 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~~

## Unofficial Comparison Version

~~be the place to~~ indicate that the letter is not an authorization to begin performance ~~(to the extent and that it allows charging to the Federal awards of award is the authorizing document.~~

(B) If pre-award costs ~~at the non-Federal entity's~~ are allowed, beginning performance is at the applicant's own risk).

(C) This section should indicate that the notice of Federal award signed by the grants officer ~~(, or equivalent),~~ is the ~~authorizing official~~ document that obligates funds, and whether it is provided through postal mail or by electronic means and to whom. ~~It also may address the~~

(D) The timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

### ~~2.~~(8) *Post-Award Requirements and Administration.*

(i) *Administrative and National Policy Requirements*—~~Required. This section must identify the usual.~~ Providing information on administrative and ~~national~~ policy requirements ~~the Federal awarding agency's Federal awards may include. Providing this information~~ lets a potential applicant identify any requirements with which it would have difficulty complying ~~if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the.~~ This subsection must include the following:

(A) A statement related to the “general” terms and conditions of the ~~Federal award, but~~ may refer to a document ~~(with information about how to obtain it) or Internet site where~~ applicants can see the terms and conditions. ~~If this funding opportunity will lead to Federal awards with some award,~~ including requirements that the Federal agency normally includes.

## Unofficial Comparison Version

(B) Any relevant special terms and conditions ~~that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about.~~

(C) Any special requirements that could apply to ~~particular Federal~~ specific awards after the review of applications and other information, based on the particular circumstances of the effort to be supported ~~(e.g., For example, if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing, or security requirements).~~

~~3.(D) As in other sections, the announcement need not include all terms and conditions of the award but may refer to documents with details on terms and conditions.~~

~~(ii) Reporting—Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of.~~

~~This subsection includes information needed to understand the post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe~~ For example, differences in ~~this~~ report type, frequency, form, format, or circumstances for use. This section ~~all relevant requirements such as those at 2 CFR 180.335 and 180.350.~~ must include the following:

## Unofficial Comparison Version

- (A) The type of reporting required, such as financial or performance.
- (B) The reporting frequency.
- (C) The means of submission, such as paper or electronic.
- (D) References to all relevant requirements, such as those at 2 CFR 180.335 and 180.350.
- (E) If the Federal share of any Federal award may include more than \$500,000 over the

period of performance, this section must inform potential applicants about the post-award reporting requirements reflected in appendix XII to this part.

### ~~G. Federal Awarding Agency Contact(s) — Required~~

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

- ~~i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).~~
- ~~ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.~~
- ~~iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).~~

### ~~H.(9) Other Information — — Optional.~~

This section may include any additional information ~~that will assist ato help~~ potential applicant~~s~~ applicants. For example, the section ~~might:~~ could include the following:

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

## Unofficial Comparison Version

~~ii. Mention related~~ (i) Related programs or other upcoming or ongoing Federal ~~awarding~~ agency funding opportunities for similar activities.

~~iii. Include current~~ (ii) Current Internet addresses for Federal ~~awarding~~ agency Web sites that may be useful to an applicant in understanding the program.

~~iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.~~

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