



## **OFFICE OF MANAGEMENT AND BUDGET**

### **2 CFR Parts 180 and 200**

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

**AGENCY:** Executive Office of the President, Office of Management and Budget

**ACTION:** Final guidance.

**SUMMARY:** The Office of Management and Budget (OMB) is issuing final guidance to Federal agencies to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (hereafter referred to as “section 872”), as that statute applies to grants. As section 872 required, OMB and the General Services Administration (GSA) have established an integrity and performance system that includes governmentwide data with specified information related to the integrity and performance of entities awarded Federal grants and contracts. This system, currently designated as the Federal Awardee Performance and Integrity Information System (FAPIIS), integrates various sources of information on the eligibility of organizations for Government awards and is currently available at <https://www.fapiis.gov>.

This final guidance implements section 872’s requirements for recipients and Federal awarding agencies to report information that will appear in the OMB-designated integrity and performance system and for Federal awarding agencies to consider information the system contains about a non-Federal entity before awarding a grant to that non-Federal entity. The final guidance for grants, which also applies to cooperative agreements, also addresses how the designated integrity

and performance system and other information may be used in assessing recipient integrity.

**DATES:** This guidance is effective January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Rhea Hubbard, Office of Federal Financial Management, Office of Management and Budget, [rhubbard@omb.eop.gov](mailto:rhubbard@omb.eop.gov), telephone (202) 395-2743.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

A. This final guidance to Federal agencies implement Sections 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. No. 110-417, codified as amended at 41 U.S.C. 2313)

On February 18, 2010 (75 FR 7316), the Office of Management and Budget (OMB) proposed a number of changes to Title 2 of the Code of Federal Regulations (2 CFR). Since publication of the February 2010 *Federal Register* notice, OMB finalized the portion of the guidance at 2 CFR part 25, which includes requirements for obtaining a Universal Identifier and registering in the System for Award Management (SAM) formerly called the Central Contractor Registration system (CCR) in the *Federal Register* on September 14, 2010 [75 FR 55671]. Part 25 was expedited and finalized separately from the guidance being issued today because it was needed to support reporting of subawards made on or after October 1, 2010, as the next step in implementation of the Federal Funding Accountability and Transparency Act (“Transparency Act,” Pub. L. No. 109-282, as amended). The preamble of the *Federal Register* notice that finalized 2 CFR part 25 included responses to the public comments that we received on the proposed requirements related to DUNS numbers and CCR (which subsequently became SAM

and is accessible at <https://www.sam.gov>). The remainder of this notice therefore does not address that portion of the February 2010 *Federal Register* notice.

Also since publication of the February 2010 *Federal Register* notice, OMB published final guidance at 2 CFR part 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards on December 26, 2013 [78 FR 78589]. This final guidance streamlined the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards and provided a governmentwide framework for grants management. Part 200 incorporated portions of the proposed guidance at part 27 regarding notices of funding opportunities, see 2 CFR 200.203. Therefore this notice does not address certain portions of part 27 that were proposed in the February 2010 *Federal Register* notice. Further, OMB is no longer issuing parts 27, 35, and 77 separately. The final guidance incorporates the proposed guidance at parts 27, 35, and 77 into part 200. This approach is consistent with the intent for part 200 to serve as a governmentwide framework for grants management.

The February 2010 *Federal Register* notice proposed changes to governmentwide guidance for nonprocurement debarment and suspension remain reflected in the final guidance at 2 CFR part 180.

B. The major elements of the proposed guidance, which are addressed in this notice, are requirements for:

- Federal awarding agencies to report information to the designated integrity and performance system about any termination of an award due to a material failure to comply with the award terms and conditions; any administrative agreement with a non-Federal entity to resolve a suspension or debarment proceeding; and any finding that a

non-Federal entity is not qualified to receive a given award, if the finding is based on criteria related to the non-Federal entity's integrity or prior performance under Federal awards.

- Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 to provide information to the designated integrity and performance system about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent five year period and that were connected with the award or performance of a Federal award.
- Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 are required to disclose semiannually the information about the criminal, civil, and administrative proceedings that section 872 (c) describes.
- Federal awarding agencies, prior to making an award to a non-Federal entity, to determine whether that non-Federal entity is qualified to receive that particular award. In making the determination, the Federal awarding agency must take into consideration any information about the entity that is in the designated integrity and performance system.
- Notice of funding opportunities and Federal award terms and conditions to inform a non-Federal entity that it may submit comments to the designated integrity and performance system about any information that the Federal awarding agency had reported to the system about the non-Federal entity, for consideration by the Federal awarding agency in making future Federal awards to the non-Federal entity.

We received comments on these elements of the proposed guidance from four State agencies, seven Federal agencies or agency components, and three associations representing

community health centers, academic institutions, and industrial firms, respectively. We considered all comments received and made some of the recommended improvements in developing the final guidance. Some of the more significant changes are to:

- make the guidance for grants and cooperative agreements as consistent where practicable with the FAPIIS guidance in the Federal Acquisition Regulation (FAR) that applies to procurement contracts (48 CFR 9.104), thereby simplifying implementation for non-Federal entities that receive both Federal assistance and procurement awards;
- provide information on the legislative amendment to section 872, which was enacted after issuance of the proposed guidance, that requires making certain information in the designated integrity and performance system available to the public;
- provide information that must be included in a notice of funding opportunity regarding implementation of integrity and performance reporting;
- clarify the process that a Federal awarding agency follows when making a determination that a non-Federal entity is qualified to receive an award based on a review of information in the designated integrity and performance system and other sources;
- add wording to help ensure that all non-Federal entities, including applicants under programs that do not have program announcements, are fully aware of the potential effects of information about them in the designated integrity and performance system and their right to submit comments about the information; and
- add a requirement that Federal awarding agencies wait 14 calendar days after posting information to the non-public segment of the designated integrity and performance system before making the information available through the public segment of the system to be consistent with the acquisitions community's requirements.

Additional changes were made for clarity or completeness. For example, the simplified acquisition threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (Definitions) is periodically adjusted for inflation in accordance with 41 U.S.C. 1908 and is now set at \$150,000. Consequently, we updated the threshold citation throughout the guidance by including a reference to the definition available at 2 CFR 200.88. Also, several of the systems referred to in the guidance, namely the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS), have been migrated into SAM and no longer exist as stand-alone systems. Further, the General Services Administration (GSA) plans to migrate the currently designated integrity and performance system, FAPIIS, to SAM and the language describing the system in the final guidance is designed to accommodate future system changes. Additional system migrations to SAM and other central portals will make it easier for agencies and recipients to input and receive information through a central website.

C. The designated integrity and performance system integrates various sources of information regarding non-Federal entities to help Federal awarding agencies ensure that a thorough review of available databases with relevant information on to determine whether a recipient is qualified occurs before the issuance of Federal awards. In addition to the designated integrity and performance system, Federal awarding agencies are able to conduct matching to help determine qualification for Federal awards and payments through complementary efforts, such as the Do Not Pay working system maintained by the Department of the Treasury. While Treasury conducts matching against the Do Not Pay working system for all appropriate Federal payments, in accordance with the Improper Payments Elimination and Recovery Improvement Act of 2012, Federal awarding agencies are responsible for determining which of the Do Not Pay databases are appropriate to review for pre-award purposes. As required by 2 CFR part 180, Federal

awarding agencies are required to check SAM Exclusions prior to the issuance of Federal awards, which is available directly through SAM or the Do Not Pay working system. Federal awarding agencies are not required to check the other databases that are part of the Do Not Pay working system for pre-award purposes where the Federal awarding agency has determined that the designated integrity and performance system (currently FAPIIS) and SAM provide more relevant information to making decisions on recipient qualification. As governmentwide systems continue to mature, there may be opportunities for further integration between the various systems.

D. Section 872 applies without distinguishing between for-profit and other recipients. Thus, notwithstanding 2 CFR 200.101(c) general permissive application of subparts A through E to for-profits, agencies must apply to for-profit recipients (in agencies' regulations, policies, or directly through the terms and conditions of Federal awards) the requirements reflected in this final guidance. OMB is considering governmentwide guidance to apply consistent treatment towards for-profit grant and cooperative agreement recipients, including the requirements of Section 872.

E. Since publishing the proposed guidance, Section 852 of the National Defense Authorization Act for Fiscal Year 2013 set forth additional requirements for the designated integrity and performance system to include, to the extent practicable, additional information on any parent, subsidiary, or successor entities to corporations included in the system. In order to address these additional requirements, OMB is considering publishing proposed guidance to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2013.

## II. Comments and Responses

Sections II. A through II. F of this preamble summarize the major comments and our responses. General comments that address more than one portion of the guidance are summarized in section II.A. Each of the other sections addresses comments pertaining to a specific portion of the proposed guidance.

### A. General comments

Comment: One State agency asked when GSA will establish the specifics of the FAPIIS data system and whether the specifics will be posted for comment.

Response: GSA continues to make improvements to enable the designated integrity and performance system to collect other information for use by Federal awarding agencies that must make determinations concerning recipient qualifications. The public opportunity to comment on specific information to be collected from contractors and recipients of assistance awards is through the Paperwork Reduction Act (PRA) clearance process. The PRA clearance for procurement contracts was addressed in the *Federal Register* documents with the FAR changes and approved under OMB Clearance Number 9000-0174. The PRA clearance for grants and cooperative agreements was addressed in the *Federal Register* documents issued October 1, 2010 [75 FR 60756], February 11, 2011 [76 FR 7851], and July 3, 2014 [79 FR 38028].

Comment: One industry association and one university association asked that we implement section 872 for grants in a manner that conforms with the implementation for procurement contracts, except where justified by the substantive differences between assistance and procurement. Noting that their constituents receive contracts, as well as grants, they recommended use of identical wording of any required questions or assurances, as well as electronic entry of data through the same system.

Response: We agree that conformity to the maximum extent practicable is important for requirements that are common to both recipients of grants and contractors. The award term and condition for grants and cooperative agreements therefore requires recipients to enter certain information through SAM, the same system that contractors use for that purpose. A recipient and contractor must answer identical questions in SAM and, if applicable, must provide the same information about the types of proceedings identified in section 872.

Comment: The industry and university associations and one Federal awarding agency responded to the invitation in the February 2010 *Federal Register* notice to comment on a possible expansion of the scope of the designated integrity and performance system to “include recipient information from authoritative data sources not described in this guidance.” One association recommended we not expand the scope to information not related to the performance of a Federal or State contract or grant. The other strongly suggested limiting it to information related to performance under Federal awards only. The Federal awarding agency recommended building the system to allow for future expansion to include data on integrity and performance information beyond what was delineated in the proposed guidance.

Response: OMB may expand the scope of the system to include information related to integrity and performance information beyond what was delineated in the proposed guidance.

Comment: A university association suggested that we reaffirm that the term “recipient” throughout the 2 CFR guidance proposed in the February 2010 *Federal Register* notice means the organization receiving an award, as it usually does in the assistance community, and does not also include associated individuals. They stated that the reaffirmation was especially important as it relates to recipient qualification matters addressed in subpart A of the proposed 2 CFR part 35.

Response: As defined at 2 CFR 200.86, the term “recipient” means “a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.” Thus, the term does not include individuals such as the organization’s employees or other individuals who may only be involved in performance of the project or program under the award because those individuals did not receive the Federal award directly from a Federal awarding agency.

Comment: The university association also recommended that we state in the guidance that information in the designated integrity and performance system is not subject to disclosure in response to Freedom of Information Act (FOIA) requests. They noted that the *Federal Register* notice for the final FAR rule on section 872 stated that the question of access to the data under FOIA would be determined on a case-by-case basis.

Response: After publication of the proposed guidance, section 872 was amended to require public disclosure of information in designated integrity and performance system other than past performance reviews. Actions posted in system on or after April 15, 2011, will be available to the public, as required by section 3010 of Pub. L. No.111-212. Agencies’ disclosure of information should be consistent with all applicable statutes that limit such disclosures. For example, heightened attention should be given to whether documentation includes information that involves privacy, security, proprietary business interests, and law enforcement investigations. Only information posted after April 15, 2011 will be subject to the disclosure requirements in section 3010 of Pub. L. No. 111-212.

B. Comments on requirements in the proposed 2 CFR part 27 for announcements of funding opportunities

Comment: Two Federal awarding agencies recommended we revise the guidance in the

proposed §27.210 that the form and content of agency program announcements must adhere to those of the standard announcement format contained in the appendix to part 27. They recommended that we instead require agencies' announcements to comply with a "substantial conformance" standard that would provide greater flexibility. The agencies were particularly concerned about the wording in Section II of Subdivision 1 of the announcement format stating that agencies' announcements should conform to the numbering convention in the standard format. They noted that wording could require them to modify information systems currently used in conjunction with program announcements and associated agency guidance documents.

Response: We removed the information on format because OMB reissued final guidance on notice of funding opportunities available at 2 CFR 200.203 and Appendix I to part 200. Further, the remaining portions of the proposed guidance at part 27 are incorporated into part 200.

Comment: One Federal awarding agency noted that we should narrow the scope of the proposed guidance for paragraph E.3 of the announcement format in the appendix to part 27. The proposed guidance for that paragraph required an agency to inform potential applicants that awarding officials would consider information in designated integrity and performance system prior to making awards. The commenter noted that the guidance should exempt announcements under which a Federal awarding agency anticipated no Federal awards with Federal funding in excess of the simplified acquisition threshold above which section 872 requires Federal awarding agencies to consider information in the system.

Response: We agree and Appendix I to Part 200 reflects that information regarding the designated integrity and performance system is included in notices of funding opportunities when the Federal awarding agency anticipates that any Federal award under a notice of funding

opportunity may include, over the period of performance, a total Federal share greater than the simplified acquisition threshold.

C. Comments on the dollar thresholds related to integrity and performance reporting

Comment: One State agency and two Federal awarding agencies sought further explanation of the differences between the three dollar thresholds related to the designated integrity and performance system—at the simplified acquisition threshold (currently \$150,000); at \$500,000; and at \$10,000,000. One of the Federal awarding agencies suggested that implementation would be simpler if the three thresholds were the same.

Response: The three thresholds are consistent with the statutory requirements of section 872:

- \$500,000 – Subsection (b) of section 872 is the source of the \$500,000 threshold. It essentially requires that the designated integrity and performance system contain information about each non-Federal entity: (1) that receives a Federal award of more than \$500,000; and (2) about which there is a proceeding that must be reported as described in section 872. Therefore, the final guidance following this preamble states that Federal awarding agencies must include the award term and condition requiring the recipient to maintain its information in designated integrity and performance system for each Federal award where it is anticipated that the total Federal share will exceed \$500,000 over the period of performance. Note that the award term and condition requires the non-Federal entity to provide the required information through the SAM (formerly CCR) and to provide the information specified in SAM.
- \$10,000,000 – The source of the \$10,000,000 threshold is subsection (f) of section 872.

Under that subsection (f) of section 872, a non-Federal entity receiving Federal awards with a total value more than \$10,000,000 must submit any information about criminal, civil, and administrative proceedings that section 872 requires and update the information semiannually. Based on feedback or as necessary, OMB may revise the \$10,000,000 threshold. Based on feedback, OMB may consider revising this affirmative disclosure threshold for grants and cooperative agreements to the extent legally permissible/consistent with the statute.

- \$150,000 – The third threshold relates to two requirements for the Federal awarding agency. The source of that threshold, which is at the simplified acquisition threshold set by the FAR at 48 CFR Subpart 2.1 and adjusted periodically to track inflation (currently \$150,000), is subparagraph (e)(2)(A) of section 872, which requires the Federal awarding agency to consider information in the designated integrity and performance system before making a Federal award for more than that threshold amount. In addition to implementing that requirement, the final guidance requires the Federal awarding agency to report to the designated integrity and performance system any instance in which the Federal awarding agency does not award a grant or cooperative agreement above that threshold amount to a non-Federal entity based on a determination that the non-Federal entity is not qualified due to its prior record of integrity or performance under Federal awards. The latter requirement is analogous to the requirement for procurement contracts in paragraph (c)(5) of section 872.

Comment: An industry association and two Federal awarding agencies recommended clarifications of the term “total value” as used in relation to the integrity and performance requirements. The association recommended we adopt the FAR wording to specify that total

value includes priced contract options, even if not yet executed. One Federal awarding agency suggested we clarify whether future funding obligations under a multi-year grant are included. The other Federal awarding agency noted that it was unclear whether the dollar thresholds in part 35 and the award term and condition in the appendix to part 35 were based on the Federal share of the funding or also included any recipient cost share or match.

Response: We agree with the comments and the final guidance located at part 200 is revised to provide the recommended clarifications. The final guidance clarifies that these thresholds are based on the Federal share of Federal awards and includes the value of all expected funding over the period of performance of the Federal award.

Comment: An industry association recommended that we amend the proposed section 35.275 and require Federal awarding agencies to include the award term and condition for integrity and performance reporting only in a grant or cooperative agreement with a total value expected to be greater than \$500,000. The commenter noted that would be consistent with the FAR requirement for procurement contracts.

Response: We agree. The final guidance located at 2 CFR 200.210 is revised, as recommended.

D. Comments related to types of information to be reported to the designated integrity and performance system

Comment: One State agency asked who would determine what type of information about a recipient would be reported by the recipient, rather than the Federal awarding agency. The agency also asked when and how the recipient would be notified about its self-reporting requirements.

Response: The award term and condition in Appendix XII to 2 CFR part 200 includes the

notification to the recipient that it must report certain information in order to comply with the integrity and performance reporting requirement. The details about the specific information that a recipient must provide are addressed in the guidance regarding the Entity Management area of SAM.

Comment: Four State agencies recommended clarifying the specific types of proceedings about which the proposed guidance required recipients to report to the designated integrity and performance system. Two agencies said that the proposed requirement for recipients to report on criminal, civil, and administrative proceedings was overly broad and some noted that State agencies can be parties to legal proceedings as part of their performance of grants that fund regulatory enforcement programs. One agency asked why the information was to be collected and what outcomes might result from a reported proceeding. Other questions were: does the requirement apply to local governments or just to a recipient in the performance of its duties under an award; does a State agency have to report a fine assessed against it by another State agency; and what type of documentation must be submitted?

Response: No change was made. The governing statute, section 872, specifies the breadth of the reporting requirement. As for the purpose of collecting the information, the designated integrity and performance system gives a Federal awarding agency more information than is presently available about a potential recipient's record of performance under prior Federal awards and occurrences that may shed light on its integrity and business ethics. The information supports compliance with long-standing policy that the Federal Government protects the public interest and ensures the integrity of Federal programs by conducting business only with responsible persons.

Potential outcomes due to reported information depend on the nature of the information. A

Federal awarding agency considers the information in the designated integrity and performance system about a non-Federal entity when determining that the non-Federal entity is qualified with respect to a particular Federal award. Information that the non-Federal entity is currently debarred or suspended precludes the making of the Federal award to the non-Federal entity in almost all cases, while other information may or may not lead the Federal awarding agency to determine that the non-Federal entity is not qualified for the Federal award. The Federal awarding agency also may notify other Federal awarding agencies about information in the designated integrity and performance system—e.g., he or she would refer to a debarring official information about a matter that may be a cause for debarment.

With respect to the commenters' other questions:

- A local government must report if it has a Federal award with an award term and condition making it subject to the reporting requirement. It would not be required to report solely by virtue of being a subrecipient under a Federal award to a State agency.
- The requirement is broader than proceedings related to a recipient's performance under an award. A recipient also must report about proceedings related to the making of a Federal award (e.g., a conviction for misuse of Federal appropriations to lobby for an award).
- A State agency must report a proceeding that results in a fine levied against it by another State agency if the violation or activity for which it is fined is in connection with the making of, or performance under, a Federal award.
- The recipient must provide the information about a proceeding that is required in SAM. No other documentation is required.

Comment: Two commenters made recommendations related to the proposed requirement for a recipient to report information to the designated integrity and performance system about

proceedings related to State awards. One commenter recommended that the requirement be made parallel with the one for contractors in the FAR clause 52.209-7(c)(1), by requiring reporting only on proceedings related to Federal awards and not also those associated with State awards. The second commenter recommended we clarify that State funds appropriated to a State's institutions of higher education would not be a "State award" for this purpose.

Response: Due to the challenges associated with collecting State government information, the final guidance does not include the proposed requirement to collect information related to State award proceedings. Collection of information related State award proceedings may be considered in a subsequent phases of implementation. This approach is consistent with the FAR implementation of section 872 (75 FR 14059).

Comment: An industry association recommended conforming the definition of "administrative proceeding" with the definition of that term in the FAR implementation of section 872.

Response: We agree. The definition is revised to be consistent with the FAR definition in section 52.209-7 of 48 CFR part 52.

Comment: A Federal awarding agency suggested two changes related to the types of proceedings for which reporting is required. It suggested defining "conviction" analogously to 2 CFR part 180, to include any deferred prosecution agreement that included a statement of guilt on the part of the defendant. The agency also suggested eliminating vagueness from paragraph B.3.d(i) of the award term and condition in the appendix to part 35, by dropping the words "it is practical to judge" from the requirement for a recipient to report on "any other criminal, civil, or administrative proceeding if it is practical for [the recipient] to judge that it could have led to" a criminal conviction or finding of fault and liability that the recipient would have been required to

report.

Response: We agree in part. We conformed the definition of “conviction” to the FAR definition, to parallel the implementation of section 872 for procurement contracts, rather than conforming it to the definition in 2 CFR part 180 that the commenter suggested. We removed the words “it is practical to judge” from the award term and condition, as recommended.

E. Other comments on requirements in 2 CFR part 35 concerning the designated integrity and performance system and recipient qualification

Comment: One Federal awarding agency suggested amending the proposed section 35.10 to exclude open-ended entitlements and programs under which funding is allocated in accordance with mandatory formulas from coverage under part 35. The Federal awarding agency questioned whether recipient qualification was an appropriate consideration under those programs, generally known as “mandatory programs,” and noted that they were excluded from coverage under the nonprocurement suspension and debarment guidance in 2 CFR part 180.

Response: We understand that the nature of mandatory programs could make it more difficult than it would be under other programs to make a Federal award to an alternative recipient if the Federal awarding agency determined that a recipient was not qualified, as the program still must serve the intended beneficiaries. However, section 872 does not provide for an exclusion of those programs. Moreover, it would be important to protect both the investment of Federal funding and the interests of the beneficiaries in the event that a recipient was found not to be qualified.

Comment: One Federal awarding agency expressed concern that the association in the proposed section 35.110 between an awarding official’s signature of an award document and his or her determination concerning the recipient’s qualification could be misinterpreted as a

requirement for a certification that the recipient is qualified. The agency noted that a certification would require the awarding official to have more information than one could reasonably expect to be available to him or her.

Response: The final guidance in part 200 no longer states that an awarding official's signature represents a determination that a recipient is qualified to receive a Federal award; however, Federal awarding agencies remain responsible for reviewing a potential recipient's records to determine whether the recipient meets the minimum standards as reflected in 2 CFR 200.205.

Comment: One Federal agency questioned whether the use of the terms "qualified" and "disqualified" in this part was consistent with the use of the term "disqualified" in 2 CFR part 180. The agency suggested defining at least one of the terms to avoid unnecessary confusion.

Response: We agree in part and made revisions of two types. First, we revised the wording in a number of places within part 200 to clarify that, under this guidance, each determination by Federal awarding agency of a non-Federal entity's qualification or disqualification pertains to the specific Federal award being contemplated at that time. It is possible for a Federal awarding agency to determine that a non-Federal entity is not qualified for one award and, depending on the reasons for that first determination, qualified for another award. For example, a Federal awarding agency may determine that a non-Federal entity is: (1) not qualified for a Federal award for a large and complex program, due to information in the designated integrity and performance system indicating an unsatisfactory record for performing under Federal awards for programs of that level of complexity; and (2) qualified for a second Federal award to carry out a simpler program. Further, Federal awarding agencies may make a

Federal award to a recipient who does not fully meet these standards, if there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with §200.207.

The other revisions were to replace the term "disqualified" in part 200 with "not qualified," to remove any potential for confusion with that term as it is used and defined in 2 CFR part 180.

Comment: Two Federal awarding agencies and an association of health care centers raised questions and concerns about due process. The association expressed concern that: (1) a Federal awarding agency that determines that a non-Federal entity was not qualified for an award was not required to tell the non-Federal entity why it was not qualified; and (2) the identification of the non-Federal entity in designated integrity and performance system as a result of that determination could prevent it from receiving any Federal funding for five years. One Federal awarding agency asked if there was a process by which a non-Federal entity could appeal a Federal awarding agency's determination that it was not qualified for a Federal award, and the association and other Federal awarding agency recommended there be one.

Response: We agree in part. With respect to the first concern, we added a requirement in 2 CFR 200.212 for a Federal awarding agency to provide an explanation in the notification to a non-Federal entity about the determination that the non-Federal entity is not qualified for a Federal award.

With respect to the second concern that information in the designated integrity and performance system about a non-Federal entity could prevent it from receiving any Federal funding, we note that a Federal awarding agency's determination that a non-Federal entity is not qualified is related to a specific award that is being contemplated. As explained more fully in the response to the previous comment, that determination does not preclude the making of a different

Federal award to the non-Federal entity. We revised the wording in multiple places in part 200 to clarify that connection with a specific Federal award.

On the matter of appeals of a Federal awarding agency's determination that a non-Federal entity is not qualified for a Federal award, we did not revise the guidance to require delay of individual Federal awards, to allow an opportunity for appeal after the Federal awarding agency makes the determination. A governmentwide requirement is impractical in light of the constraints under which many Federal programs operate, with firm schedules for program execution that are impelled by statute or needs for timely obligation of appropriated funds. Individual Federal awarding agencies may, if timing constraints for their programs permit, offer an opportunity for appeal or additional input to the Federal awarding agency prior to award. Also note that the commenters' concern should be addressed by the opportunities provided for the non-Federal entity's input. Sections 200.212 and 200.340 require Federal awarding agencies to notify non-Federal entities when information that may be used when Federal awarding agencies are making future funding decisions is entered into the designated performance and integrity system. Non-Federal entities whose information is entered will have the opportunity to comment on information included in the system.

We anticipate that Federal agencies' and recipients' current apprehension about the use of the designated integrity and performance system will abate over time, as they gain practical experience with the system and associated requirements. If lessons learned from the use of the designated integrity and performance system warrant further improvements to the system or clarifications to the guidance, we will carefully evaluate the existing guidance and revise the guidance, as appropriate.

Comment: Two Federal awarding agencies commented on the requirements in the

proposed section 35.120 for a Federal awarding official to check SAM (formerly EPLS) and the designated integrity and performance system. One agency stated that it was important that Federal awarding agencies be required to check SAM (formerly EPLS) separately, as the designated integrity and performance system would not provide all of the information they required concerning non-Federal entities that were debarred, suspended, or otherwise excluded or disqualified from participation in covered Federal transactions. The other Federal awarding agency recommended including a table to make clear the different dollar thresholds for use of the two systems—SAM (formerly EPLS) must be checked before making any Federal covered transaction, regardless of award amount, while the requirement to check the designated integrity and performance system applies to a Federal award with a total value expected to exceed the simplified acquisition threshold.

Response: We agree in part and plan to provide further clarification to Federal awarding agencies regarding the relationship between various governmentwide systems. As discussed earlier in the preamble, GSA plans to integrate the designated integrity and performance system (currently FAPIIS) into SAM, so including a detailed chart in the final guidance outlining when a Federal awarding agency is required to check specific systems is not appropriate as the chart may become obsolete. Although a Federal awarding agency searching the current designated integrity and performance system about a potential recipient entity may receive information in response to the search, as well as information from other data systems accessed through the system, the current design does not ensure that the awarding official receives all the SAM information that he or she needs. For instance, FAPIIS does not reflect whether a non-Federal entity has an active SAM registration as required by 2 CFR part 25. As the commenters note, the awarding official also must check SAM Exclusions as required by 2 CFR part 180 prior to

making a Federal award for an amount below the dollar threshold at which he or she is required to check the designated integrity and performance system. Therefore, it is imperative that a Federal awarding agency separately checks SAM prior to making an award at this time.

Comment: A Federal awarding agency noted the requirement in the proposed paragraph 35.120(a)(3)(ii) for a Federal awarding agency to check the SAM Exclusions (formerly EPLS) for potential subaward recipients if Federal approval of those subrecipients was required under the terms and conditions of the Federal award. It asked if a prime recipient was required to check the designated integrity and performance system for information about a non-Federal entity to which it intended to make a subaward.

Response: If the terms and conditions of the Federal award require the recipient to obtain Federal awarding agency approval of subawardees, the Federal awarding agency must check SAM Exclusions to verify whether a proposed subrecipient is debarred, suspended, or otherwise disqualified from the subaward. In addition, a recipient is always required under existing policy (2 CFR 180.300) to verify that a non-Federal entity to which it intends to make a subaward is not excluded or disqualified from the transaction, whether or not Federal awarding agency approval of the subrecipient is required. Unlike a Federal awarding agency, however, 2 CFR 180.300 allows recipients multiple ways in which it can do the verification, checking SAM Exclusions being just one of those ways. While only Federal awarding agencies are required to consider information available through the designated integrity and performance system for awards expected to exceed the simplified acquisition threshold, a recipient and the general public are also able to check the system for information in doing checks of subrecipients.

Comment: A State agency, noting the same requirement in the proposed paragraph 35.120(a)(3)(ii) to check SAM (formerly EPLS), asked how the process works if a recipient does

not know the identity of all subrecipients at the time it receives a Federal award. It asked if the Federal award includes a term requiring verification of subrecipients and whether that delays the making of subawards.

Response: The requirement stated in the proposed guidance is not reflected in the final guidance at 2 CFR part 200; however, this requirement is not new. The existing policy located at 2 CFR 180.425, states that a Federal awarding agency must check SAM Exclusions for potential subrecipients if its approval of the subrecipients is required. When that approval is required, the Federal awarding agency can check SAM Exclusions after the prime award is made if the subrecipients' identities are not known until then.

F. Comments on proposed amendments to the nonprocurement suspension and debarment guidance in 2 CFR part 180

Comment: One Federal awarding agency recommended revising 2 CFR 180.520 to require suspending and debarring officials to enter information into SAM Exclusions (formerly EPLS) within three working days of taking a suspension or debarment action, a reduction from the current five days. The Federal awarding agency noted that this change was made in the FAR, in 48 CFR 9.404, as part of the implementation of the FAPIIS requirements for procurement contracts.

Response: We agree. We made the recommended change and similarly revised 2 CFR 180.655, to establish a three-day time period for suspending and debarring officials to report information about administrative agreements to the designated integrity and performance system.

Comment: Two Federal agencies suggested revising the requirement in the proposed section 2 CFR 180.655 for a Federal suspending or debarring official to report information to the designated integrity and performance system about each administrative agreement into which the

Federal Government enters with a non-Federal entity in lieu of a suspension or debarment. One Federal awarding agency recommended delaying the effective date of the requirement until a planned update to the designated integrity and performance system added the capability to accept information about administrative agreements. The other Federal awarding agency suggested adding a requirement for reporting any modifications of administrative agreements to the designated integrity and performance system.

Response: We agree and have made changes in sections 2 CFR 180.655 and 180.660 that are responsive to the recommendations. In October 2010, the designated integrity and performance system gained the capability to accept information about administrative agreements. The system specifies the information that must be reported.

Comment: A Federal awarding agency recommended deleting the requirement in the proposed section 2 CFR 180.660 for a Federal suspending or debarring official to include information about the designated integrity and performance system in each administrative agreement into which he or she enters with a non-Federal entity in lieu of a suspension or debarment action. The Federal awarding agency stated that the express purpose of an administrative agreement is to preserve the non-Federal entity's eligibility to receive a Federal award. It added that the notice of funding opportunities under which Federal awards are made are the appropriate places to inform the non-Federal entity about Federal awarding agency's consideration of information that they receive through the designated integrity and performance system, including information about administrative agreements.

Response: We agree. We removed the proposed section 180.660 from the final guidance. Due to the removal of section 180.660, section 180.665 of the guidance proposed in the February 2010 *Federal Register* notice has been designated as section 180.660 in the final guidance.

Comment: The same Federal awarding agency recommended deleting the requirements in the proposed paragraphs 2 CFR 180.715(h) and 180.870(b)(2)(v) for a Federal suspending or debaring official to include information about the designated integrity and performance system in each notice of a suspension or debarment action. The Federal awarding agency noted that each notice already informs the suspended or debarred entity that the action results in its being listed in SAM Exclusions (formerly EPLS), with the mandatory effect of excluding it from covered transactions. The Federal awarding agency further noted that the availability of the information to a Federal awarding agency through the designated integrity and performance system, in addition to SAM, does not alter that mandatory effect. It suggested that adding information about designated integrity and performance system to the notice of suspension or debarment therefore could only confuse the matter.

Response: We agree. We removed the proposed amendments to sections 180.715 and 180.870 from the final guidance.

### **III. Next Steps**

This final guidance is effective for Federal awards issued on or after January 1, 2016 that meet the thresholds as described in the preamble and to existing awards that are terminated on or after January 1, 2016 due to material failure to comply with the Federal award terms and conditions. Federal awarding agencies that have formally adopted 2 CFR parts 180 and 200 in their entirety in 2 CFR will begin implementing this final guidance on January 1, 2016. Federal awarding agencies who adopted 2 CFR parts 180 and 200 through another means must work with OMB to ensure their regulations or policies are updated effective January 1, 2016. OMB will collaborate with GSA to ensure that the user guides and other guidance materials regarding the designated integrity and performance system are updated to reflect use by the Federal

assistance community. Applicants and recipients will see the agencies' implementation reflected in requirements identified in notice of funding opportunities or other agency releases with application instructions, as well as in the new award term and condition in Appendix XII to 2 CFR part 200.

#### List of Subjects

##### 2 CFR Part 180

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

##### 2 CFR Part 200

Accounting, Auditing, Colleges and Universities, State and Local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

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David Mader

Controller

For the reasons stated in the preamble and under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR Parts 180 and

200 as set forth below:

TITLE 2 — GRANTS AND AGREEMENTS

Chapter I — Office of Management and Budget Governmentwide Guidance for Grants and Agreements

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

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

**Authority:** Sec. 2455, Pub. L. No.103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

**§180.520 [Amended]**

2. Amend §180.520(c) introductory text by removing the words “generally within five working days,” and adding in their place “within three business days,”.
3. Add §180.650 to subpart F to read as follows:

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

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

4. Add §180.655 to subpart F to read as follows:

**§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 within three business days after entering into the agreement. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

5. Add §180.660 to subpart F to read as follows:

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

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

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

(b) Must correct in the designated integrity and performance system, 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.

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

Chapter II — Office of Management and Budget Guidance

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND

## AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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

Authority: 31 U.S.C. 503.

### **§ 200.0 [Amended]**

7. Amend §200.0 by adding “(accessible at <https://www.sam.gov>)” after “System for Award Management”.
8. Revise §200.113 to read as follows:

### **§200.113 Mandatory disclosures.**

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations 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 and condition outlined in Appendix XII – Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

### **§ 200.203 [Amended]**

9. Amend §200.203 paragraph (c)(5) by removing “See also 2 CFR part 27 (forthcoming at time of publication).”
10. Revise §200.205 paragraph (a) to read as follows:

### **§200.205 Federal awarding agency review of risk posed by applicants.**

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a

Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the publicly available information in the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with §200.207 Specific conditions.

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11. In §200.210, add paragraph (b)(1)(iii) to read as follows:

**§200.210 Information contained in a Federal award.**

\*\*\*\*\*

(b) \*\*\*

(1) \*\*\*

(iii) Recipient integrity and performance matters. If the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal awarding agency must include the term and condition available in Appendix XII – Award Term and Condition for Recipient Integrity and Performance Matters. See also §200.113 Mandatory disclosures.

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12. In §200.211, revise paragraph (b) and add paragraph (c) to read as follows:

**§200.211 Public access to Federal award information.**

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

- (1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 42.15;
- (2) Information that was entered prior to April 15, 2011; or
- (3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

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

13. Revise §200.212 to read as follows:

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

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because

the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in §200.205, Federal awarding agency review of risk posed by applicants, paragraph (a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in paragraph (a) of this section is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in §200.205 Federal awarding agency review of risk posed by applicants, paragraph (a)(2) (i.e., the entity was determined to be qualified based on all factors other than those two standards), and

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

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and includes specific award terms and conditions, as described in §200.207 Specific conditions.

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

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

(2) The information will be kept in the system for a period of five years from the date of the

determination, as required by section 872 of Pub. L. No.110-417, as amended (41 U.S.C. 2313), then archived;

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

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

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

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

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

(2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven

calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

14. Add §200.213 to subpart C to read as follows:

**§200.213 Suspension and debarment.**

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

**§ 200.300 [Amended]**

15. Amend §200.300 paragraph (b) by removing “Central Contractor Registration” and adding in its place “System for Award Management”.

**§ 200.318 [Amended]**

16. Amend §200.318 paragraph (h) by removing “§200.212” and adding in its place “§200.213”.

17. In §200.339, revise paragraph (b) and add paragraph (c) to read as follows:

**§200.339 Termination.**

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(b) When a Federal awarding agency terminates a Federal award prior to the end of the period of

performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (b) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either--

(i) Has exhausted its opportunities to object or challenge the decision, see §200.341

Opportunities to object, hearings and appeals; or

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

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

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

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior

to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(c) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

18. Revise §200.340, paragraph (b) to read as follows:

**§200.340 Notification of termination requirement.**

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(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and

performance portal accessible through SAM (currently (CPARS)).

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

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19. In Appendix I to Part 200, revise paragraph E.3., add paragraph E.4., and revise paragraph F.3. to read as follows:

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

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E. \*\*\*

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance (see §200.88 Simplified Acquisition Threshold), this section must also inform applicants:

- i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (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 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;
- iii. That the Federal awarding agency will consider any comments by the applicant, in addition to

the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.205 Federal awarding agency review of risk posed by applicants.

4. *Anticipated Announcement and Federal Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include 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.

F. \*\*\*

3. *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 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 in this section all relevant requirements such as those at 2 CFR 180.335 and 2 CFR 180.350.

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 – Award Term and Condition for Recipient Integrity and Performance Matters.

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20. Add Appendix XII to Part 200 to read as follows:

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

A. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

*1. General reporting requirement.*

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

*2. Proceedings about which you must report.*

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or

procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

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

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

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

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

### *3. Reporting procedures.*

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### *4. Reporting frequency.*

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### *5. Definitions.*

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes —

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or

match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

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