



DEPARTMENT OF THE INTERIOR

Office of the Secretary

2 CFR Part 1402

[DOI-2018-0013; 190D0102DM, DS62400000, DLSP00000.000000, DX62401]

RIN 1090-AB19

Financial Assistance Interior Regulation

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the Financial Assistance Interior Regulation (FAIR). The FAIR supplements the Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), which was adopted by the Department of the Interior (DOI or Department) on December 19, 2014. This proposed rule would support the Department's goal of improving its financial assistance program, consolidate the Department's financial assistance regulations and policies derived from the OMB Uniform Guidance, and streamline the implementation of OMB's Uniform Guidance and DOI financial assistance policy.

DATES: Submit comments on or before [INSERT DATE 30 days AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments on the rulemaking through the Federal eRulemaking Portal at <http://www.regulations.gov>. Type in DOI-2018-0013 in the search bar. Please use Regulation Identifier Number (RIN) 1090-AB19 in your message. Follow the instructions on the Web site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Kaprice Tucker, Associate Director, Office of Acquisition and Property Management, Department of the Interior, 1849 C Street NW, Mail Stop 4262 MIB, Washington, DC 20240; telephone (202) 208-3466; or e-mail Kaprice_Tucker@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Background.

On December 26, 2013, the Office of Management and Budget (OMB) published its *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (referred to as the “Uniform Guidance,” 78 FR 78590). The OMB Uniform Guidance, 2 CFR Part 200, provided a government-wide framework for Federal awards management and streamlined administrative requirements, cost principles, and audit requirements for Federal awards including grants and cooperative agreements.

The Uniform Guidance required Federal agencies to promulgate regulations implementing the policies and procedures applicable to Federal awards by December 26, 2014. On December 19, 2014, the Department published a final rule to adopt the OMB Uniform Guidance in full as 2 CFR part 1402, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [79 FR 75867]. Three days later, on December 22, 2014, DOI issued memoranda to supplement the following provisions of the OMB Uniform Guidance: (1) Indirect Cost Rates for Federal Financial Assistance Awards and Agreements; (2) Conflict of Interest and Mandatory Disclosures for Financial Assistance; (3) Financial Assistance Application and Merit review Processes; and (4) Financial Assistance Awards for For-Profit Entities, Foreign Public Entities, and Foreign Organizations. On February 8, 2016, the Department published a proposed rule to establish the FAIR and to consolidate all of the policy

memoranda into a regulation to be codified at 2 CFR part 1402 (81 FR 6462). Two comments were received addressing, first, details of the conflicts of interest provision and, second, the application of 2 CFR part 200, subparts E (Cost Principles) and F (Audit Requirements), to tribal awards. These two comments were addressed by expanding the conflict of interest provision to be consistent with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and by clarifying the applicability of 2 CFR part 200, subparts E and F, to tribal awards in this proposed rulemaking, respectively.

Because the RIN for the 2016 proposed rule expired and Departmental leadership wanted to strengthen the conflict of interest provisions and incorporate open science and land acquisition provisions, the Department is proposing the current version of its FAIR regulations as a revision to 2 CFR part 1402 for public comment.

The FAIR regulations proposed today would: first, revise 2 CFR part 1402 to more accurately reflect exceptions to this part; and second, add supplemental regulations for DOI's financial assistance program that would be codified at 2 CFR part 1402. The proposed rule represents an administrative simplification and is not intended to make any substantive changes to 2 CFR part 200 policies and procedures. Thus, this rulemaking is not seeking to revisit substantive issues resolved during the development and finalization of the OMB Uniform Guidance which was adopted by the Department on December 19, 2014. The purpose of the proposed rule is to help ensure that financial assistance provided by the DOI is administered in full compliance with applicable law, regulation, policy and best practices to ensure the American people get the most value from the money the DOI spends on financial assistance. The sections in this rule represent areas of the financial assistance program where questions have been raised

by stakeholders, including auditors. As a result, DOI seeks to provide clarity in these specific areas.

DISCUSSION OF THE PROPOSED RULE

Subpart A of the proposed rule sets forth definitions for terms used in this part. Terms defined in this proposed rulemaking are “data,” “employment,” “financial assistance officer,” foreign entity,” “non-Federal entity,” and “real property.” Several of these terms help clarify proposed regulatory changes designed to avoid real or apparent conflicts of interest which might place a federal employee, non-Federal entity, its employees, and/or its subrecipients in a position of conflict, real or apparent. Proposed terms also define “real property” and “data,” to address DOI’s specific focus on interests in land and to address transparency in the use of data.

Subpart B sets forth proposed general provisions including: the purpose of the part, application, exceptions, policies and procedures that apply to non-Federal entities, conflict of interest policies, and mandatory disclosure requirements. DOI is proposing to revise § 1402.100 to more-accurately explain the purpose of the part, which includes establishment of financial assistance regulations designed to ensure that financial assistance is administered in full compliance with applicable law, regulation, policy and best practices and help ensure the American people get the most value from the money the DOI spends on financial assistance. The proposed part also extends certain regulatory provisions to foreign public entities and foreign organizations. The revised § 1402.101 provides that the proposed regulations would apply to all DOI grant-making activities and to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI financial assistance award after the effective date of the final rule, unless otherwise authorized by Federal statute. The part also applies to foreign entity applicants and recipients, except where the DOI office or bureau determines that the application of the

proposed regulations would be inconsistent with international obligations of the United States or statutes or regulations of a foreign government.

Section 1402.102 is revised to further clarify that awards made in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2204), as amended, are governed by 25 CFR parts 900 and 1000, and by 2 CFR part 200, subparts E and F. This proposed regulation also provides a process for requesting exceptions to requirements of this part by foreign entities.

The proposed revision to § 1402.103 explains that non-Federal entities must follow bureau or office policies and procedures as communicated in notices of funding opportunity (NOFOs) and award terms and conditions. If such policies or procedures conflict with existing regulations at 2 CFR part 200 or this part, then the regulations at 2 CFR part 200 or this part, when finalized, will supersede, unless otherwise authorized by Federal statute.

Proposed § 1402.112 sets forth requirements related to conflicts of interest that apply to recipients of financial assistance awards. The proposed rule would require the full text of language proposed in paragraphs (a) through (f) in all NOFOs and financial assistance awards. This section is proposed in order to make clear to non-Federal entities that they must appropriately address prohibited conflicts of interest preventing them from providing impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement. Paragraphs (a) through (f) set forth direction on applicability, a discussion of conflicts, appropriate action that must be taken to avoid a conflict of interest, and enforcement.

Section 1402.113 provides that, in addition to disclosures required under 2 CFR 200.112 and 200.113, non-Federal entities and applicants must disclose in writing any potential or actual

conflict of interest and must also disclose any outstanding unresolved matters with the Government Accountability Office or the Office of Inspector General of any Federal agency when submitting a proposal and through the life of the award.

Under subpart C, the proposed rule addresses: merit review requirements for competitive awards, requirements for domestic for-profit entities, specific financial assistance award terms and conditions that apply to domestic for-profit entities, and lobbying disclosure and certification requirements.

Proposed § 1402.204 sets forth merit review requirements for competitive grants and cooperative agreements unless otherwise prohibited by Federal statute. This proposed section also provides that it is important for DOI bureaus and offices to create review systems for discretionary programs that are noncompetitive that consider statutory or regulatory provisions and include a business evaluation, risk assessment, and other applicable government-wide pre-award considerations.

This proposed section also requires pre-award considerations for both discretionary competitive and noncompetitive awards to take into account the alignment of the award's purpose, goals, and measurement with the current DOI Government Performance and Results Act Strategic Plan.

Section 1402.204 also sets forth an expectation of maximum competition in awarding discretionary funds, unless otherwise directed by Congress. The proposed rule also provides that when grants and cooperative agreements are awarded competitively, the process will be fair and impartial, that all applicants will be evaluated only on the criteria stated in the announcement, and that no applicant receives an unfair competitive advantage. The proposed rule also sets forth direction on developing an evaluation and selection plan which should be finalized prior to the

release of a notice of funding opportunity (NOFO). This section of the proposed rule also sets forth direction on: the composition of an evaluation and selection plan, completeness of applications and proposals, timeliness, threshold screening, merit review evaluation screening, and risk assessments.

Proposed §§ 1402.206 and 1402.207 are designed to be read together. Section 1402.206 provides that § 1402.207(a) contains standard award terms and conditions that always apply to for-profit entities and that terms in § 1402.207(b) contain terms that are required for all subawards and contracts over the simplified acquisition thresholds. The section further lists additional administrative guidelines in existing regulations and in proposed § 1402.414 that may be applied to domestic for-profit entities. Provision is made for particular program offices and bureaus to develop specific administrative guidelines for domestic for-profits. Finally, proposed § 1402.206 provides that bureau and office award terms and conditions must be managed in accordance with requirements in existing 2 CFR 200.210.

Proposed § 1402.207 lists specific conditions that always apply to domestic for-profit entities and subawards. In addition to all other applicable terms and conditions, specific financial assistance award terms and conditions proposed in § 1402.207(d) apply to foreign entities.

Proposed § 1402.208 provides that non-Federal entities are strictly prohibited from using Federal funds under a grant or cooperative agreement for lobbying activities pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

Subpart D includes proposed regulations that set forth post Federal award requirements. Section 1402.300 provides direction on relevant statutory and national policy requirements. This section provides that DOI bureaus and offices will communicate to the non-Federal entity all

relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award. The proposed section makes clear that the non-Federal entity is responsible for complying with all requirements of the award, including listed statutes and, in the case of recipients conducting work outside the United States, those entities are responsible for coordinating with appropriate United States and foreign government authorities as necessary to make sure all required licenses, permits, or approvals are obtained before undertaking project activities. In addition, direction in this section is provided to DOI bureaus and offices regarding compliance with the “World Heritage Convention,” if an undertaking outside of the United States may directly and adversely affect a property that is on the World Heritage List or the applicable country’s equivalent of the National Register of Historic Places. Finally, the proposed section provides that foreign entities are responsible for complying with all requirements of the Federal award and provides a non-exhaustive list of requirements.

Proposed § 1402.315 sets forth requirements for availability of data that implement Secretary’s Order 3369, “Promoting Open Science,” dated October 18, 2018. The proposed requirements in this section rely on existing regulatory provisions found at 2 CFR 200.315(d) to achieve the goals set forth in section 4b(3) of the Secretary’s Order to provide the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department. To accomplish these goals, the section provides that DOI bureaus and offices shall specifically require under the terms of any award, the ability to publicly release associated data, defined as including scientific data, methodology, factual inputs, models, analyses, technical information, or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual,

subject to applicable laws. This provision would apply to all grants, cooperative agreements, or other similar agreement between any Bureau, Office, or other organization of the Department and any third party and would not be limited to rulemaking.

Section 1402.329 proposes requirements for land acquired under an award. The proposed regulation provides that prior to land purchases bureaus and offices must ensure compliance with the prior written approval requirements for land acquisition in existing 2 CFR 200.439.

Whenever a recipient is seeking DOI approval to use award funds to purchase an interest in real property, OMB-approved government-wide data elements must be submitted to the responsible bureau or office. For this provision, the Financial Assistance Officer is responsible for ensuring compliance. Furthermore, all aspects of the purchase must be in compliance with applicable laws and regulations relating to purchases of land or interests in land. The proposed section also requires that unless a waiver valuation applies in accordance with 49 CFR 24.102(c), land or interests in land that will be acquired under the award must be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or the “Yellow Book”), which is incorporated by reference, by a real property appraiser licensed or certified by the state or states in which the property is located and that the appraisal report shall be reviewed by a qualified review appraiser that meets qualifications established by the DOI Appraisal and Valuation Services Office (AVSO). Requirements are also set forth in this section for foreign land acquisition.

Proposed § 1402.329 also sets forth direction that for all financial assistance actions where real property, as defined in this proposed rule, is acquired under the Federal award, the recipient must submit reports on the status of the real property as required by 2 CFR 200.329. If the interest in real property will be held for less than 15 years, reports must be submitted

annually; otherwise the recipient must submit the first report within one year of the period of performance end date of the award and then, at a minimum every five years thereafter. The proposed rule also sets forth who should receive the reports, the required format, contents, and timing for such reports.

Proposed § 1402.414 would establish DOI policy, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates applicable to all Federal financial assistance programs awarded and administered within DOI. The proposed regulatory text sets forth procedures and criteria for using an indirect cost rate other than the non-Federal entity's negotiated rate. The goal of this section is to provide consistent direction within the Department on negotiated indirect cost rate deviations to ensure compliance with the Uniform Guidance.

Existing provisions of 2 CFR 200.414(c) require Federal agencies to accept federally negotiated indirect cost rates. Federal agencies may use a rate different from the negotiated rate for a class of awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegatee based upon documented justification described within 2 CFR 200.414(c)(3).

For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the proposed rule provides that the basis of direct costs against which the indirect cost rate is applied must be: the same base identified in the recipient's negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or, the modified total direct cost (MTDC) base, in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the awarding bureau or office, when the recipient's federally negotiated indirect cost rate agreement

base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered.

Proposed § 1402.414(d) provides that in cases where the recipient does not have a federally negotiated indirect cost rate agreement, the Department will not use a modified rate based upon total direct cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68.

Section 1402.414(d) goes on to provide direction on indirect cost rate deviation required by statute or regulation, indirect cost rate reductions used as cost-share, programmatic indirect cost rate deviation approval process, voluntary indirect cost rate reduction, and unrecovered indirect costs.

Incorporation by reference: The purpose of the *Uniform Appraisal Standards for Federal Land Acquisitions* (Yellow Book) is to promote fairness, uniformity, and efficiency in the appraisal of real property in federal acquisitions. The same goals of uniformity, efficiency, and fair treatment of those affected by public projects underlie the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which applies to federal acquisitions as well as many state and local government acquisitions involving federal funds. The Yellow Book is available in hard copy or interactive electronic format from The Appraisal Foundation at http://www.appraisalfoundation.org/imis/TAF/Yellow_Book.aspx or from the U.S. Department of Justice at <https://www.justice.gov/file/408306/download>.

Invitation to Comment: The Department of the Interior is inviting comments concerning the proposed sections.

II. Required Determinations.

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order (E.O.) 12866 provides that the OMB's Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives.

2. Regulatory Flexibility Act.

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department of the Interior generally does not award grants to small businesses. The vast majority of Interior grants are awarded to States, local governments, and not-for-profit organizations.

3. Small Business Regulatory Enforcement Fairness Act.

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

- a) Does not have an annual effect on the economy of \$100 million or more. The Department of the Interior generally does not award grants to small businesses.
- b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-

based enterprises. This rule establishes regulations for DOI financial assistance. DOI financial assistance is typically offered to States, local governments and not-for-profit institutions. It would not affect business relationships, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete internationally.

4. Unfunded Mandates Reform Act.

This rule:

- a) Does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year.
- b) Does not have a significant or unique effect on State, local, or tribal governments, or the private sector.
- c) This proposed regulation would clarify the applicability of two existing regulations—the regulatory requirement for reporting under 2 CFR 200.329 – Reporting on Real Property, and the regulatory language establishing use of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or “Yellow Book”) standard under 49 CFR 24.103—to financial assistance actions at the Department of the Interior. This proposed regulation establishes a permitted standard for appraisals under 49 CFR 24.103 and specifies the required timing increments of reports under 2 CFR 200.329.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630).

Under the criteria in section 2 of E.O. 12630, this rule does not have significant takings implications. It does not impose any obligations on the public that would result in a taking. A takings implication assessment is not required.

6. *Federalism (E.O. 13132).*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This is because it would not substantially and directly affect the relationship between the Federal and state governments. Accordingly, a Federalism summary impact statement is not required.

7. *Civil Justice Reform (E.O. 12988).*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- a) Meets the criteria of section 3(a) of this E.O. requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b) Meets the criteria of section 3(b)(2) of this E.O. requiring that all regulations be written in clear language and contain clear legal standards.

8. *Consultation with Indian tribes (E. O. 13175).*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effect on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

9. *Paperwork Reduction Act, 44 U.S.C. 3501, et seq.*

This regulation will require the use of the SF 429 to fulfill the requirement in 2 CFR 200.329. Each Bureau will submit a request for common form usage to the Office of Management and Budget for use of SF 429 – Real Property Status Report – Cover Page, SF 429A – Real Property Status Report – Attachment A – General Reporting, and SF 429B – Real Property Status Report – Attachment B – Request to Acquire, Improve, or Furnish.

10. National Environmental Policy Act.

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement “policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject to the NEPA process, either collectively or case-by-case.”

11. Effects on the Energy Supply (E.O. 13211).

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

12. Plain Language.

We are required by section 1(b)(12) of E.O. 12866 and Section 3(b)(1)(B) of E.O. 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a) Be logically organized;
- b) Use the active voice to address readers directly;

- c) Use common, everyday words and clear language rather than jargon;
- d) Be divided into short sections and sentences; and
- e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section of this preamble.

List of Subjects in 2 CFR Part 1402

Accounting, Administrative practice and procedure, Adult, education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs-agriculture, Grant programs-business, Grant programs-communications, Grant programs-education, Grant programs-energy, Grant programs-health, Grant programs-housing and community development, Grant programs-social programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs-agriculture, Loan programs-business and industry, Loan programs-communications, Loan programs-energy, Loan programs-health, Loan programs-housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust

Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

For the reasons set forth in the preamble, the Department of the Interior proposes to revise 2 CFR part 1402 to read as follows:

**PART 1402—FINANCIAL ASSISTANCE INTERIOR REGULATION,
SUPPLEMENTING THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST
PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

Subpart A - Definitions

Sec.

- 1402.1 Definitions.
- 1402.2 Data.
- 1402.3 Employment.
- 1402.4 Financial Assistance Officer.
- 1402.5 Foreign entity.
- 1402.6 Non-Federal entity.
- 1402.7 Real property.

Subpart B - General Provisions

- 1402.100 Purpose.
- 1402.101 To whom does this part apply?
- 1402.102 Are there any exceptions to this part?
- 1402.103 What other policies or procedures must non-Federal entities follow?
- 1402.104-1402.111 [Reserved]
- 1402.112 What are the conflict of interest policies?
- 1402.113 What are the mandatory disclosure requirements?
- 1402.114-1402.203 [Reserved]

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

- 1402.204 What are the merit review requirements for competitive awards?
- 1402.205 [Reserved]
- 1402.206 What are the FAIR requirements for domestic for-profit entities?

- 1402.207 What specific conditions apply?
1402.208 What are the lobbying disclosure and certification requirements?
1402.209-1402.299 [Reserved]

Subpart D - Post Federal Award Requirements

- 1402.300 What are the statutory and national policy requirements?
1402.301-1402.314 [Reserved]
1402.315 What are the requirements for the availability of data?
1402.316-1402.328 [Reserved]
1402.329 What are the requirements for land acquired under an award?
1402.330-1402.413 [Reserved]
1402.414 What are the negotiated indirect cost rate deviation policies?
1402.415-1402.999 [Reserved]

AUTHORITY: 5 U.S.C. 301 and 2 CFR part 200.

Subpart A - Definitions

§ 1402.1 Definitions.

The definitions in this subpart are for terms used in this part. For terms used in this part that are not defined, the definitions in 2 CFR part 200 apply. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

§ 1402.2. Data.

Data includes scientific data, methodology, factual inputs, models, analyses, technical information, or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

§ 1402.3 Employment.

Employment includes any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as, or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee of the other organization.

§ 1402.4 Financial Assistance Officer.

Financial Assistance Officer means a person with the authority to enter into, administer, and/or terminate financial assistance awards (including grants and cooperative agreements); and make related determinations and findings.

§ 1402.5 Foreign entity.

Foreign entity means both “foreign public entity” and “foreign organization,” as defined in 2 CFR 200.46 and 200.47.

§ 1402.6 Non-Federal entity.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

§ 1402.7 Real property.

Real property has the same meaning as set forth in 2 CFR 200.85, except that the definition in this section also applies to interests in land such as easements.

Subpart B - General Provisions

§ 1402.100 Purpose.

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform Guidance applies in full except as stated in this part.

(b) This part establishes DOI financial assistance regulations that implement or supplement the OMB's Uniform Guidance. It is designed to ensure that financial assistance is administered in full compliance with applicable law, regulation, policy, and best practices to ensure the American people get the most value from the money DOI spends on financial assistance. For supplemental guidance, DOI has adopted section numbering that corresponds to related OMB guidance in 2 CFR part 200.

(c) This part extends 2 CFR part 200, subpart A through E, policies and procedures to foreign public entities and foreign organizations as allowed by 2 CFR 200.101, except as indicated throughout this part.

§ 1402.101 To whom does this part apply?

(a) This part applies to all DOI grant-making activities and to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal award after [EFFECTIVE DATE OF THE FINAL RULE], unless otherwise authorized by Federal statute.

(b) This part applies to foreign entity applicants and recipients, except where the DOI office or bureau determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government (see 2 CFR 1402.102). For the purposes of this part, the term "foreign entities" means both "foreign public entities" and "foreign organizations," as those terms are defined in 2 CFR part 200.

(1) Foreign entities are subject to the definitions and requirements in 2 CFR part 200, subparts A through E, and as supplemented by this part. In addition to the general requirements in 2 CFR part 200, foreign entities must follow the special considerations and requirements for different classes of recipients in subparts A through E as follows, unless otherwise instructed in this part:

(i) Foreign public entities are to follow those for states, with the exception of the state payment

procedures in 2 CFR 200.305(a). Foreign public entities must follow the payment procedures for non-Federal entities other than states;

(ii) Foreign nonprofit organizations are to follow those for nonprofits; and

(iii) Foreign higher education institutions are to follow those for Institutions of Higher Education (IHEs).

§ 1402.102 Are there any exceptions to this part?

(a) Awards made in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2204), as amended, are governed by 25 CFR parts 900 and 1000, and by 2 CFR part 200, subparts E and F.

(b) Exceptions for individual foreign entities to the requirements in this part may be authorized by the Director, Office of Grants Management. Such exceptions must be made in accordance with written bureau or office policy and procedures.

(1) Foreign entities must request any exception to a requirement established in this part in writing. Such requests must be submitted to the funding bureau or office by an authorized official of the foreign entity, and must provide sufficient pertinent background information, including:

(i) Identification of the requirement under this part that is inconsistent with an in-country statute or regulation to which the foreign entity is subject;

(ii) A complete description of the in-country statute or regulation, including a description of how it prohibits or otherwise limits the foreign entity's ability to comply with the identified requirement under this part; and

(iii) Identification of the entity's name, DOI award(s) affected, and point of contact for the

request.

(2) The Director, Office of Grants Management may approve exceptions for individual foreign entities to the requirements of this part only when it has been determined that the requirement to be waived is inconsistent with either the international obligations of the United States or the statutes or regulations of a foreign government. Bureaus and offices will communicate exception request decisions to the requesting entity in writing.

(3) Submissions by public international organization submissions of any assurances, certifications or representations required for and related to a Federal award do not constitute a waiver of immunities provided under the International Organizations Immunities Act (22 U.S.C. 288-288f).

(4) Foreign entities are not subject to the following requirements in 2 CFR part 200:

(i) Generally accepted accounting principles (GAAP). Foreign entities may be subject to other applicable international or in-country alternatives to GAAP, such as the International Financial Reporting Standards (IFRS). See 2 CFR 200.403, Factors affecting allowability of costs;

(ii) 2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms; and

(iii) Section 6002 of the Solid Waste Disposal Act. See 2 CFR 200.322, Procurement of recovered materials.

§ 1402.103 What other policies or procedures must non-Federal entities follow?

Non-Federal entities must follow bureau or office policies and procedures as communicated in notices of funding opportunity (NOFOs) and award terms and conditions. In the event such policies or procedures conflict with 2 CFR part 200 or this part, 2 CFR part 200 or this part will supersede, unless otherwise authorized by Federal statute.

§§ 1402.104–1402.111 [Reserved]

§ 1402.112 What are the conflict of interest policies?

This section shall apply to all non-Federal entities. NOFOs and financial assistance awards must include the full text of the conflict of interest provisions in paragraphs (a) through (f) of this section.

(a) *Applicability.* (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) *Requirements.* (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.

(2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

(3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or

subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) *Notification.* (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(d) *Restrictions on lobbying.* Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

(e) *Review procedures.* The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(f) *Enforcement.* Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for noncompliance, including suspension or debarment (see also 2 CFR part 180).

§ 1402.113 What are the mandatory disclosure requirements?

In addition to the disclosures required under 2 CFR 200.112 and 200.113, non-Federal entities, including applicants for all Federal awards, must disclose in writing any potential or

actual conflict of interest to the DOI awarding agency or pass-through entity. Non-Federal entities and applicants must also disclose any outstanding unresolved matters with the Government Accountability Office or an Office of Inspector General when submitting a proposal and through the life of the award as needed.

§§ 1402.114-1402.203 [Reserved]

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

§1402.204 What are the merit review requirements for competitive awards?

The requirements in this section apply to competitive grants and cooperative agreements unless otherwise authorized by Federal statute. Merit review procedures must be described or incorporated by reference in NOFOs (see 2 CFR part 200, appendix I, and 2 CFR 200.203). It is also important for DOI bureaus and offices to create review systems for noncompetitively awarded discretionary programs that consider statutory or regulatory provisions, risk assessment, and other applicable government-wide pre-award considerations. Pre-award considerations for both discretionary competitive and noncompetitive awards shall take into account the alignment of the award's purpose, goals, and measurement with the current DOI Government Performance and Results Act Strategic Plan including, the mission statement, vision, values, goals, objectives, strategies and performance metrics therein.

(a) *Competition in grant and cooperative agreement awards.* Maximum competition is expected in awarding discretionary funds, unless otherwise directed by Congress. When grants and cooperative agreements are awarded competitively, DOI requires that the competitive process be fair and impartial, that all applicants be evaluated only on the criteria stated in the announcement, and that no applicant receive an unfair competitive advantage. All competitive funding announcements, and all modifications/amendments to those announcements, must be

posted on Grants.gov (www.grants.gov).

(b) *Independent objective evaluation of financial assistance applications and proposals.* Bureaus and offices must conduct reviews of applications submitted in response to the announcement and for selecting applicants for award following established merit review procedures. Bureaus and offices must conduct comprehensive, impartial, and objective review of applications based on the criteria contained in the announcement by individuals who have no conflicts of interest with respect to the competing proposal/applications or applicants. Bureaus and offices must ensure reviewers are qualified, applications are scored on the basis of announced criteria, consideration is given to the level of applicant risk and past performance, applications are ranked, and funding determinations are made.

(c) *Evaluation and Selection Plan for notice of funding opportunities.* Bureaus and offices must develop an Evaluation and Selection Plan in concert with the notice of funding opportunity (NOFO) to ensure consistency, and to outline and document the selection process. The Evaluation and Selection Plan should be finalized prior to the release of the NOFO. An Evaluation and Selection Plan is comprised of five basic elements:

- (1) Merit review factors and sub-factors;
- (2) A rating system (e.g., adjectival, color coding, numerical, or ordinal);
- (3) Evaluation standards or descriptions that explain the basis for assignment of the various rating system grades/scores;
- (4) Program policy factors; and
- (5) The basis for selection.

(d) *Basic review standards.* Bureaus and offices must initially screen applications/proposals to ensure that they meet the standards in paragraphs (e) through (g) of this section before they are

subjected to a detailed evaluation utilizing a merit review process specified in paragraph (h) of this section. The review system should include three phases: Initial Screening, Threshold Screening, and a Merit Review Evaluation Screening. Bureaus and offices may remove an application from funding consideration if it does not pass the basic eligibility screening per paragraphs (e) through (g) of this section.

(e) *Completeness*. Bureaus and offices may return applications/proposals that are incomplete or otherwise fail to meet the requirements of the Grants.gov announcement to the applicant to be corrected, modified, or supplemented, or may reject the application/proposal outright. Until the application/proposal meets the substantive requirements of the announcement and this part, it shall not be given detailed evaluation. Bureaus and offices may use discretion to determine the length of time for applicants to resolve application deficiencies.

(f) *Timeliness*. Bureaus and offices must consider the timeliness of the application submission. Applications that are submitted beyond the announced deadline date must be removed from the review process.

(g) *Threshold Screening*. Bureaus and offices are responsible for screening applications and proposals for the adequacy of the budget and compliance with statutory and other requirements. The SF-424 and budget information (SF-424A, SF-424C, or OMB-approved alternate budget data collection) must be reviewed according to Department of the Interior policy.

(h) *Merit Review Evaluation Screening*. This is the final review stage where the technical merit of the application/proposal is reviewed. In the absence of a program rule or statutory requirement, program officials shall develop criteria that include all aspects of technical merit. Bureaus and offices shall develop criteria that are conceptually independent of each other, but all-encompassing when taken together. While criteria will vary, the basic criteria shall focus

reviewers' attention on the project's underlying merit (i.e., significance, approach, and feasibility). The criteria shall focus not only on the technical details of the proposed project but also on the broader importance or potential impact of the project. The criteria shall be easily understood.

(i) *Risk assessments.* Bureaus and offices must also consider risk thresholds during application/proposal review process. Elements to be considered may include organization; single audit submissions, past performance; availability of necessary resources, equipment, or facilities; financial strength and management capabilities; and procurement procedures; or procedures for selecting and monitoring subrecipients or sub-vendors, if applicable. For all non-Federal entities that receive an award, the Financial Assistance Officer must document the risk analysis.

(j) *Requirements for proposal evaluators.* Upon receipt of a Memorandum of Appointment, each proposal evaluator and advisor must sign and return a Conflict of Interest Certificate to the Financial Assistance Officer. If an actual or potential conflict of interest exists, the appointee may not evaluate or provide advice on a potential applicant's proposal until the conflict has been resolved or mitigated. Further, each proposal evaluator or advisor must agree to comply with any notice or limitation placed on the application. Upon completion of the review, the proposal evaluator or advisor shall return or destroy all copies of the application and accompanying proposals (or abstracts) to DOI; and unless authorized by the Financial Assistance Officer or agency designee, the reviewer shall not contact the non-Federal entity concerning any aspect of the application.

§ 1402.205 [Reserved]

§ 1402.206 What are the FAIR requirements for domestic for-profit entities?

(a) *Requirements for domestic for-profit entities.* (1) Section 1402.207(a) contains standard

award terms and conditions that always apply to for-profit entities and § 1402.207(b) contains terms that apply to sub-awards or contracts with for-profit entities over the simplified acquisition threshold. Bureaus and offices must incorporate into awards to domestic for-profit organizations the award terms and conditions that always apply, either directly or by reference.

(2) Bureaus and offices may apply the administrative guidelines in subparts A through D of 2 CFR part 200, the cost principles at 48 CFR part 31, subpart 31.2, and the procedures for negotiating indirect costs (detailed in §1402.414) to domestic for-profit entities.

(3) Depending on the nature of a particular program, offices and bureaus may additionally develop program-specific administrative guidelines for domestic for-profits based on the requirements in 2 CFR part 200, subparts A through D, but may not apply more restrictive requirements than the requirements in 2 CFR part 200, subparts A through D, unless approved by OMB through a request to the Director, Office of Grants Management.

(b) *Requirements for award terms and conditions.* Bureau and office award terms and conditions must be managed in accordance with the requirements in 2 CFR 200.210, Information contained in a Federal award.

§ 1402.207 What specific conditions apply?

(a) The following financial assistance award terms and conditions always apply to domestic for-profit entities:

(1) 2 CFR part 25, Universal Identifier and System for Award Management.

(2) 2 CFR part 170, Reporting Subawards and Executive Compensation Information.

(3) 2 CFR part 175, Award Term for Trafficking in Persons.

(4) 2 CFR part 1400, government-wide debarment and suspension (non-procurement).

(5) 2 CFR part 1401, Requirements for Drug-Free Workplace (Financial Assistance).

(6) 43 CFR part 18, New Restrictions on Lobbying. Submission of an application also represents the applicant's certification of the statements in 43 CFR part 18, appendix A, Certification Regarding Lobbying.

(7) 41 U.S.C. 4712, Whistleblower Protection for Contractor and Grantee Employees. The requirement in this paragraph (a)(7) applies to all awards issued after July 1, 2013.

(8) 41 U.S.C. 6306, Prohibition on Members of Congress Making Contracts with the Federal Government. No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this paragraph (a)(8) shall not be construed to extend to an award made to a corporation for the public's general benefit.

(9) Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving. Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the Executive Order.

(b) The recipient shall insert the following clause in all subawards and contracts related to the prime award that are over the simplified acquisition threshold, as defined in the Federal

Acquisition Regulation:

All awards and related subawards and contracts over the Simplified Acquisition Threshold, and all employees working on applicable awards and related subawards and contracts, are subject to the whistleblower rights and remedies in accordance with the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

Recipients, their subrecipients and contractors that are awarded contracts over the Simplified Acquisition Threshold related to an applicable award, shall inform their employees, in writing, in

the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The following award terms and conditions apply to for-profit recipients as specified in 2 CFR 200.101:

(1) Administrative requirements: 2 CFR part 200, subparts A through D.

(2) Cost principles: 48 CFR part 31, subpart 31.2, Contracts with Commercial Organizations.

(3) Indirect cost rate negotiations. For information on indirect cost rate negotiations, contact the Interior Business Center (IBC) Indirect Cost Services Division by telephone at (916) 566-7111 or by e-mail at ics@ibc.doi.gov. Visit the IBC Indirect Cost Services Division website at http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm for more information.

§ 1402.208 What are the lobbying disclosure and certification requirements?

Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities, and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

§§ 1402.210-1402.399 [Reserved]

Subpart D - Post Federal Award Requirements

§ 1402.300 What are the statutory and national policy requirements?

(a) DOI bureaus and offices will communicate to the non-Federal entity all relevant public policy requirements, including those in general 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 Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the FFATA for the non-Federal entity at 2 CFR part 25,

financial assistance use of universal identifier and system for award management, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information. 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.

(c) Recipients conducting work outside the United States are responsible for coordinating with appropriate United States and foreign government authorities as necessary to make sure all required licenses, permits, or approvals are obtained before undertaking project activities. DOI does not assume responsibility for recipient compliance with the laws, regulations, policies, or procedures of the foreign country in which the work is conducted.

(d) As required in 54 U.S.C. 307101, World Heritage Convention, prior to the approval of any undertaking outside the United States that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register of Historic Places, the DOI bureau or office having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

(e) Foreign entities are responsible for complying with all requirements of the Federal award. For awards to foreign entities, this includes:

(1) 2 CFR part 25, Universal Identifier and System for Award Management, unless the entity meets one or more qualifying conditions and is exempted by the awarding bureau or office as provided for in 2 CFR part 25;

(2) 2 CFR part 170, Reporting Subaward and Executive Compensation Information;

(3) 2 CFR part 175, Award Term for Trafficking in Persons. This term is required in awards to foreign private entities. The term is also required in awards to foreign public entities, if funding

could be provided under the award to a foreign private entity as a subrecipient;

(4) 2 CFR part 1400, Nonprocurement Debarment and Suspension. Awards to foreign organizations are covered transactions under the DOI nonprocurement debarment and suspension program. Awards to foreign public entities are not covered transactions;

(5) 43 CFR part 18, New Restrictions on Lobbying. Foreign entities shall file the 43 CFR part 18, appendix A, certification, and a disclosure form, if required, with each application for Federal assistance. See also 31 U.S.C. 1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions; and

(6) Pub. L. 113-235 (128 Stat. 2391, Dec. 16, 2014). Federal award recipients are prohibited from requiring employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

§§ 1402.301-1402.314 [Reserved]

§ 1402.315 What are the requirements for availability of data?

(a) All data resulting from a financial assistance agreement is available for use by the Department of the Interior, including being available in a manner that is sufficient for independent verification.

(b) Data includes scientific data, methodology, factual inputs, models, analyses, technical information, or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

(c) The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;
and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes, including to allow for meaningful third-party evaluation and reproduction.
- (d) Bureaus and offices of the Department of the Interior must include the language in paragraphs (a), (b), and (c) of this section in full text in all NOFOs and financial assistance agreements.

§§ 1402.316-1042.328 [Reserved]

§ 1402.329 What are the requirements for land acquired under an award?

(a) *Approval prior to land purchases.* Bureaus and offices must ensure compliance with the prior written approval requirements for land acquisition in 2 CFR 200.439. Whenever a recipient is seeking DOI's approval to use award funds to purchase an interest in real property, the OMB-approved governmentwide data elements for collection of real property reporting information, as of [EFFECTIVE DATE OF THE FINAL RULE], SF-429-B, Request to Acquire, Improve, or Furnish, or approved alternate standardized data collection, must be submitted to the bureau or office. The Financial Assistance Officer is responsible for ensuring that this requirement is met. All aspects of the purchase must be in compliance with applicable laws and regulations relating to purchases of land or interests in land.

(b) *Appraisal requirements for land purchases.* Unless a waiver valuation applies in accordance with 49 CFR 24.102(c), land or interests in land that will be acquired under the award must be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, 6th Edition, dated December 6, 2016 (UASFLA or the "Yellow Book") by a real property appraiser licensed or certified by the state or states in which the property is located. The appraisal report

shall be reviewed by a qualified review appraiser that meets qualifications established by the DOI Appraisal and Valuation Services Office (AVSO), which is responsible for appraisal and valuation services and policy across the Department. Bureaus and offices shall ensure that funds are not disbursed for purchases of land or interests in land without an appraisal accompanied by a written appraisal review report that complies with standards approved by AVSO. Where appraisals are required to support federally assisted land acquisitions, AVSO has oversight responsibilities for these appraisals, including those purchased through financial assistance actions in the various grant programs within the Department. AVSO will coordinate with grant programs to conduct periodic internal control review of appraisal and appraisal review reports prepared in conjunction with grant applications for land acquisition. The Director of the Federal Register approves the incorporation by reference of the Yellow Book in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a print copy or interactive electronic version from The Appraisal Foundation at <https://www.appraisalfoundation.org/iMIS/itemDetail?iProductCode=351&Category=PUB> or a read-only version from the U.S. Department of Justice at <https://www.justice.gov/file/408306/download>. You may inspect a copy at the Appraisal and Valuation Services Office within the Department of the Interior located at 1840 C St. NW, Washington, DC, 20240 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(c) *Foreign land acquisition.* Land to be acquired under an award that is located outside the United States must be appraised by an independent real property appraiser licensed or certified in the country in which the property is located in accordance with any in-country appraisal

standards, if they exist, or with International Valuation Standards, when such appraisals are available and financially feasible. Otherwise, the non-Federal entity must use the most widely accepted business practice for property valuation in the country where the property is located and provide to the awarding DOI bureau or office a detailed explanation of the methodology used to determine value.

(d) *Requirements for recipient reporting on real property purchases.* (1) For all financial assistance actions where real property is acquired under the Federal award, the recipient must submit reports on the status of the real property. Bureaus and offices must ensure recipients receive written notification of those reporting requirements, including reporting frequency/schedule, report content requirements, and submission instructions, at the time of award.

(2) If the interest in the land will be held for less than 15 years, reports must be submitted annually. If the interest in the land will be held for 15 years or more, then the recipient must submit the first report within one year of the period of performance end date of the award and then, at a minimum, every five years thereafter.

(3) The reports must be submitted to the Financial Assistance Officer within the period of performance of the award. After the end of the period of performance, reports must be submitted to a designated individual. Each bureau must have a process in place to designate specific individuals to receive, and review and accept the report.

(4) Recipients must use the OMB-approved governmentwide data elements for collection of real property reporting information, as of [EFFECTIVE DATE OF THE FINAL RULE], the Real Property Status Report Standard Form (SF) 429-A, General Reporting, to report status of land or interests in land under Federal financial assistance awards. Bureaus or offices may request to use

an equivalent reporting format. The Director, Office of Grants Management must approve alternate equivalent formats.

(5) Reports must include, at a minimum, sufficient information to demonstrate that all conditions imposed on the land use are being met, and a signed certification to that fact by the recipient of the financial assistance award.

(6) The Financial Assistance Officer must indicate the reporting schedule, including due dates, in the award document. The schedule must conform with the frequency required in paragraph (d)(2) of this section. For awards issued prior to [EFFECTIVE DATE OF THE FINAL RULE], the recipient must contact the program to establish due dates for reports going forward. If there is already a reporting schedule in place, then the recipient and the program shall ensure that the schedule is updated to conform with this part prior to the due date of the next scheduled report.

§§ 1402.330-1402.413 [Reserved]

§ 1402.414 What are the negotiated indirect cost rate deviation policies?

(a) This section establishes DOI policies, procedures, and decision making criteria for using an indirect cost rate that differs from the non-Federal entity's negotiated rate or approved rate for DOI awards. These are established in accordance with 2 CFR 200.414(c)(3) or 200.414(f).

(b) DOI accepts indirect cost rates that have been reduced or removed voluntarily by the proposed recipient of the award, on an award-specific basis.

(c) For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the basis of direct costs against which the indirect cost rate is applied must be:

(1) The same base identified in the recipient's negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or

(2) The Modified Total Direct Cost (MTDC) base, in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the awarding bureau or office, when the recipient's federally negotiated indirect cost rate agreement base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered. MTDC is the base defined by 2 CFR 200.68, Modified Total Direct Cost (MTDC).

(d) In cases where the recipient does not have a federally negotiated indirect cost rate agreement, DOI will not use a modified rate based upon total direct cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68.

(1) *Indirect cost rate deviation required by statute or regulation.* In accordance with 2 CFR 200.414(c)(1), a Federal agency must use a rate other than the Federal negotiated rate where required by Federal statute or regulation. For such instances within DOI, the official award file must document the specific statute or regulation that required the deviation.

(2) *Indirect cost rate reductions used as cost-share.* Instances where the recipient elects to use a rate lower than the federally negotiated indirect cost rate, and uses the balance of the unrecovered indirect costs to meet a cost-share or matching requirement required by the program and/or statute, are not considered a deviation from 2 CFR 200.414(c), as the federally negotiated indirect cost rate is being applied under the agreement in order to meet the terms and conditions of the award.

(3) *Programmatic indirect cost rate deviation approval process.* Bureaus and offices with DOI approved deviations in place prior to [EFFECTIVE DATE OF THE FINAL RULE] are not required to resubmit those for reconsideration following the procedures in this paragraph (d)(3). The following requirements apply for review, approval, and posting of programmatic indirect

cost rate waivers:

(i) *Program qualifications.* Programs that have instituted a program-wide requirement and governance process for deviations from federally negotiated indirect cost rates may qualify for a programmatic deviation approval.

(ii) *Deviation requests.* Deviation requests must be submitted by the responsible senior program manager to the DOI Office of Grants Management. The request for deviation approval must include a description of the program, and the governance process for negotiating and/or communicating to recipients the indirect cost rate requirements under the program. The program must make its governance documentation, rate deviations, and other program information publicly available.

(iii) *Approvals.* Programmatic deviations must be approved, in writing, by the Director, Office of Grants Management. Approved deviations will be made publicly available.

(4) *Voluntary indirect cost rate reduction.* On any single award, an applicant and/or proposed recipient may elect to reduce or eliminate the indirect cost rate applied to costs under that award. The election must be voluntary and cannot be required by the awarding official, NOFO, program, or other non-statutory or non-regulatory requirements. For these award-specific and voluntary reductions, DOI can accept the lower rate provided the notice of award clearly documents the recipient's voluntary election. Once DOI has accepted the lower rate, that rate will apply for the duration of the award.

(5) *Unrecovered indirect costs.* In accordance with 2 CFR 200.405, indirect costs not recovered due to deviations to the federally negotiated rate are not allowable for recovery via any other means.

§§ 1402.415-1402.499 [Reserved]

Susan Combs.

Senior Advisor to the Secretary,
exercising the authority of the Assistant Secretary
for Policy Management and Budget.

[FR Doc. 2019-05239 Filed: 3/20/2019 8:45 am; Publication Date: 3/21/2019]