



**THE U.S. DEPARTMENT OF STATE  
STANDARD TERMS AND CONDITIONS  
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## **I. Introduction**

The non-Federal entity and any sub-non-Federal entity must, in addition to the assurances and certifications made as part of the award, comply with all applicable terms and conditions during the project period.

## **II. Order of Precedence**

In the event of any inconsistency between provisions of the award, the inconsistency will be resolved by giving precedence in the following order:

- A. Applicable laws and statutes of the United States, including any specific legislative provisions mandated in the statutory authority for the award.
- B. Code of Federal Regulations (CFR)
- C. Award Specifics
- D. Standard Terms and Conditions
- E. Other documents and attachments

## **III. Controlling Language**

In accordance with [2 CFR 200.111](#), it is the Department of State's policy that all award documents must be in the English language and in terms of U.S. dollars, including correspondence and supporting documents. If an award or any supporting documents are provided in both English and a foreign language, it must be stated in each version that the English language version is the controlling version.

## **IV. Department of State (DOS) Responsibilities**

DOS has overall responsibility for Department-funded awards, including providing oversight for technical, programmatic, financial and administrative performance.

### Agency Award Administrator - Grants Officer (GO)

The GO is responsible for all actions on behalf of the DOS, including entering into, changing, or terminating an award. The GO is authorized by a warrant issued by the Procurement Executive in the Office of the Procurement Executive. In addition, the GO is responsible for administrative coordination and liaison with the non-Federal entity.

The GO is the only person authorized to approve changes in any of the requirements in the award. In the event the non-Federal entity effects any change at the direction of any person other than the GO, the change(s) will be considered to have been made without authority and no adjustment will be made in the amount of the award to cover any increase in costs incurred as a result thereof.

### Agency Program Contact - Grants Officer Representative (GOR)

In accordance with DOS standard policy, the GO is responsible for all aspects of the award, but may designate technically qualified personnel to join in the administration of grants. The GOR is delegated by the GO and responsible for the programmatic, technical, and/or scientific aspects of the award. Non-Federal entities should direct any correspondence related to programmatic and budgetary issues to both the GO and GOR.

## **V. Federal Awardee Performance and Integrity Information System (FAPIIS)**

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 non-Federal entity 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 \(41 U.S.C. 2313\)](#).

## **VI. Non-Federal Entity Responsibilities and Compliance with Federal Requirements**

The non-Federal entity is responsible for notifying DOS of any significant problems relating to the administrative, programmatic or financial aspects of the award.

The non-Federal entity has full responsibility for the management of the project or activity supported under the award and for adherence to Federal regulations and the award terms and conditions. Although the non-Federal entity is encouraged to seek the advice and opinion of the GO and/or the GOR on special problems that may arise, such advice does not diminish the non-Federal entity's responsibility for making prudent and sound administrative judgments under the circumstances prevailing at the time the decision was made and should not imply that the responsibility for operating decisions has shifted to DOS.

### Non-Federal entity Key Personnel:

Within thirty (30) days after the date of execution of the award, the non-Federal entity must furnish names, titles, and brief biographical sketches (if these have not been previously furnished), including information on the education and experience of key personnel in charge of the award project and other key professional and supervisory personnel; i.e., the members of the professional staff in a program supervisory position engaged for or assigned to duties under the award to the Grants Officer. The non-Federal entity must also provide similar information for Executive officer personnel that may subsequently be assigned by the non-Federal entity to perform duties in connection with the award. Any changes, prolonged absences, or significant adjustments of total time

devoted to the award project of any listed personnel should be brought to the attention of the GO and requires prior written approval.

Sub-Non-Federal entity Flow Down Requirement:

In accordance with [2 CFR 330](#), terms and conditions flow down to all non-Federal entity subrecipients and contractors, and must be appropriately addressed in the performing organization's sub-award instrument. All cost reimbursement sub-awards (sub-grants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned.

Administrative and Allowable Cost Requirements:

All non-Federal entities shall comply with the following terms and conditions unless otherwise specified in the award

Certain applicable Federal administrative standards are incorporated by reference. Appropriate officials are made aware that electronic copies containing the complete text of the circulars are available on the Government Printing office [www.ecfr.gov](http://www.ecfr.gov) website and specifically at: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

In addition, all 2 CFR references are available on the Department of State's website at: <https://statebuy.state.gov>.

The principal investigator(s) or project director(s) shall receive a copy of the terms and conditions, including the award -specific requirements, and any subsequent changes in the terms and conditions.

The appropriate non-Federal entity officials shall be made aware of the terms and conditions made available by DOS in electronic form at <https://www.statebuy.state.gov/fa/Pages/TermsandConditions.aspx>. These term and conditions may be duplicated, copied or otherwise reproduced as appropriate.

This provision does not alter the non-Federal entity's full responsibility for conduct of the project and compliance with all terms and conditions.

## **VII. Mandatory Disclosure**

Consistent with [2 CFR 200.113](#), the non-federal entity must disclose, in a timely manner, in writing to the Office of the Inspector General (OIG) for the Department of State, with a copy to the cognizant Grants Officer, all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award.

Subrecipients must disclose, in a timely manner, in writing to the OIG and to the prime recipient (pass-through entity) all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in [2 CFR 200.338](#) "Remedies for Noncompliance", including suspension or debarment.

Forward disclosures to:

U.S. Department of State  
Office of Inspector General  
P.O. Box 9778  
Arlington, VA 22219  
Phone: 1-800-409-9926 or 202-647-3320  
Website: <https://oig.state.gov/hotline>

## **VIII. Confidentiality of Information**

Confidential information, as used in this Provision, means:

- Information or data of a personal nature about an individual that, if released, would constitute a clearly unwarranted invasion of personal privacy.

In addition to the types of confidential information described above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary invalidated findings could create erroneous conclusions, which might threaten public health or safety if acted upon.

The Grants Officer and the non-Federal entity may, by mutual consent, identify elsewhere in this award specific information and/or categories of information which the Government will furnish to the non-Federal entity or that the non-Federal entity is expected to generate which is confidential. Similarly, the Grants Officer and the non-Federal entity may, by mutual consent, identify such confidential information from time to time during the performance of the agreement.

If it is established that information to be utilized under this award is subject to the Privacy Act, the non-Federal entity will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

Written advance notice of at least 45 calendar days will be provided to the Grants Officer of the non-Federal entity's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described above. If the Grants Officer does not pose any objections in writing within the 45-calendar day period, the non-Federal entity may proceed with disclosure.

Whenever the non-Federal entity is uncertain with regard to the proper handling of material under the Federal award, or if the material in question is subject to the Privacy Act or is confidential information subject to this Provision, the non-Federal entity shall obtain a written determination from the Grants Officer prior to any release, disclosure, dissemination, or publication.

## **IX. Conflict of Interest and Federal Assistance Awards**

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of sub-awards and sub-contracts. No employee, officer, or agent may participate in the selection, award, or administration of a sub-award or subcontract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from another non-federal entity considered for a sub-award or subcontract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from sub non-Federal entities, subcontractors, or parties to sub-awards and subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting an award or procurement action involving a related organization.

The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity. If the effects of the potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the employee, officer or agent must recuse themselves from participating in the award. Where there is an organizational conflict, the prospective non-Federal entity is not eligible for the award.

If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized or mitigated, the Federal awarding agency will terminate the award unless continued performance is determined to be in the best interest of the Federal government.

## **X. Liability**

The non-Federal entity shall hold and save the Government, its officers, agents and employees harmless from all liability of any nature or kind, including costs and expenses, for or on account of any or all suits for damage sustained by any person or persons or property by virtue of performance of this award.

### Notification of Award for Similar Program

The non-Federal entity must immediately provide written notification to the Grants Officer Representative and the Grants Officer in the event that, subsequent to an award, other Federal financial assistance is received relative to that particular project award.

### Protocol and Decorum

During the term of an award, the non-Federal entity will be associated with the Government in such a manner that the non-Federal entity's actions will reflect upon the Government and the United States. Therefore, the non-Federal entity will be held accountable for appropriate protocol and decorum during the award period of performance.

## **XI. Financial Management System (FMS) Requirements**

Non-Federal entities must adhere to the Code of Federal Regulations ([2 CFR 200 Subpart D](#)) standards for financial management systems and methods for making payments, and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of costs, and establishing funds availability.

## **XII. Payments**

Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of checks, warrants, or payment by other means by the non-Federal entities. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State Cash Management Improvement Act (CMIA) agreements or default procedures codified at [31 CFR Part 205](#). Approval of payment requests will be based on the Recipient's progress towards achieving the award objectives, the amount of unexpended cash on-hand as reported in the [SF-425](#) and [SF-270](#), and the Recipient's adherence to the terms and conditions of the award, particularly in terms of timely submission of required financial, program and other reports. Delinquency in submitting reports may result in payment delays.

### Advances.

Non-Federal entities may be paid in advance, provided they maintain or demonstrate the willingness to maintain:

1. Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and
2. Financial management systems that meet the standards for fund control and accountability as established in [2 CFR Parts 200](#) and [600](#)

### Requirements and Procedures.

Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Department of State to the non-Federal entity.

In order of preference, advance payment mechanisms include:

1. Electronic funds transfer (EFT) via the Department of Health & Human Services (HHS) Payment Management System (PMS);
2. Department of State-issued electronic funds transfers (EFT); and
3. Treasury check.

The Department must authorize payment by a means other than through PMS.

#### Forms.

Unless otherwise specified in these Terms and Conditions, only the following forms shall be authorized for the non-Federal entities in requesting advances and reimbursements.

The Department shall not require more than an original and two copies.

1. [SF-270](#), Request for Advance or Reimbursement. Requests for Treasury check advance payment shall be submitted on [SF-270](#), —Request for Advance or Reimbursement, or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the non-Federal entity automatically through the use of a predetermined payment schedule or if precluded by special Department of State instructions for electronic funds transfer.
2. Payments under the award will be made through the U.S. Department of Health and Human Services Payment Management System (PMS-SMARTLINK). PMS-SMARTLINK can also be accessed at the following address:  
<http://www.dpm.psc.gov>.

If the non-Federal entity needs further assistance, they are to contact the GO identified on form [DS-1909](#). Non-Federal entities should request funds based on immediate disbursement requirements and disburse funds as soon as possible to minimize the Federal cash on hand in accordance with the policies established by the U.S. Treasury Department and mandated by OMB.

### **XIII. Prior Approval Requirements**

For non-construction Federal awards, non-Federal entities must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons: (a) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator. (b) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval. (c) The transfer of funds budgeted for participant support costs as defined in [§200.75](#) “Participant support costs” to other categories of expense. (d) Unless described in the application and funded in the approved Federal awards, the sub-awarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services. (e) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. (f) Rebudgeting more than 10% of the total approved award between direct cost categories.



#### **XIV. Period of Availability of Funds**

The project period of the award is indicated on the award cover sheet ([Form DS-1909](#)). The non-Federal entity may charge to the award only allowable costs resulting from obligations incurred during the project period. However, the funds shall be available—barring cancellation of the relevant appropriation-- for closeout activities that occur after the project period, and the non-Federal entity shall liquidate all obligations incurred under the award no later than 90 days after the project period.

#### **XV. Indirect Costs**

Indirect costs will not be allowable charges against this award unless specifically included as a line item in the approved budget for this award.

Indirect cost recovery for any actual indirect costs incurred by the non-Federal entity which are greater than the indirect cost line item in the approved award budget is limited up to the award amount.

A non-profit organization which has not previously established an indirect cost rate with a Federal agency, that believes the DOS should be its cognizant agency, shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award. For all NICRA and indirect rate inquiries please contact [AQM-NICRA@state.gov](mailto:AQM-NICRA@state.gov).

If a dispute arises in a negotiation of an indirect cost rate between DOS and the non-Federal entity, the dispute shall be resolved in accordance with the appeals procedures of the Department of State, Office of Acquisition Management (A/LM/AQM).

#### **XVI. Publication for Professional Audiences**

Any publications or articles resulting from the award must acknowledge the support of the Department of State and include a disclaimer of official endorsement as follows: “This [article] was funded [in part] by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State”. The non-Federal entity must ensure that this disclaimer be included on all brochures, flyers, posters, billboards, or other graphic artwork that are produced under the terms of the award.

#### **XVII. Branding and Marking Strategy**

The Recipient shall recognize the United States Government’s funding for activities specified under this award at the project site with a graphic of the U.S. flag accompanied by one of the following two phrases based on the level of funding for the award:

- 1) Fully funded by the award: ‘Gift of the United States Government’
- 2) Partially funded by the award: ‘Funding provided by the United States Government’

Exemptions from this requirement may be allowable but must be agreed to in writing by the Grants Officer.

All programs, projects, assistance, activities, and public communications to foreign audiences, partially or fully funded by the Department, should be marked appropriately overseas with the standard U.S. flag in a size and prominence equal to (or greater than) any other logo or identity. The requirement does not apply to the Recipient's own corporate communications or in the United States.

The Recipient should ensure that all publicity and promotional materials underscore the sponsorship by or partnership with the U.S. Government or the U.S. Embassy. The Recipient may continue to use existing logos or program materials; however, a standard rectangular U.S. flag must be used in conjunction with such logos.

The U.S. flag may replace or be used in conjunction with the Department of State seal, the U.S. embassy seal, or other DOS program logos.

Sub non-Federal entities and subsequent tier sub-award agreements are subject to the marking requirements and the non-Federal entity shall include a provision in the sub non-Federal entity agreement indicating that the standard, rectangular U.S. flag is a requirement.

In the event the non-Federal entity does not comply with the marking requirements as established in the approved assistance agreement, the Grants Officer Representative and the Grants Officer must initiate corrective action with the Non-Federal entity.

## **XVIII. Travel**

All Federal Government-financed international air transportation must be accomplished by U.S. Flag air carriers or U.S. code sharing to the extent that service by those carriers is available. These circumstances are outlined below:

1. The United States – European Open Skies Air Transport Agreement ([U.S.-E.U. Open Skies Agreement](#)) is a bilateral/multilateral agreement that allows federal funded transportation services to use foreign air carriers under specific circumstances. Due to recent modifications to the U.S. – E.U. Open Skies Agreement, the Department's travel policy has been amended.
2. The modified agreement allows travelers to:
  - a. Use EU carriers if the travelers are not eligible to use City Pair Fares. Examples would be non-Federal entities and sub non-Federal entities of Federal Awards traveling between points not reflected in the approved Federal Award budget.
  - b. Use EU carriers between points in the United States and points OUTSIDE of the EU when there is no City Pair Fare on the route or the traveler is not eligible to use the fare. In essence, this allows travelers to compare costs and select between an EU and U.S. flag carrier when the flight originates, arrives in, or stops in any of the EU countries.

- c. For additional information regarding these issues, we invite the non-federal entity to review the frequently asked questions posted on our A/LM website at [http://almopsttm.a.state.gov/EU\\_OPEN\\_SKIES\\_AMENDMENT\\_FAQ.asp](http://almopsttm.a.state.gov/EU_OPEN_SKIES_AMENDMENT_FAQ.asp) or contact "[TransportationQuery@state.gov](mailto:TransportationQuery@state.gov)."

For information on other "open skies" agreements into which the United States has entered, please refer to GSA's website at <http://www.gsa.gov/portal/content/103191>.

Refer to the electronic Code of Federal Regulations as codified published in Title [41 CFR 301.10](#), "Public Contracts and Property Management, Transportation Expenses" to obtain entire Fly America Act regulatory guidance on following website address:

[www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

## **XIX. Prohibition Against Assignment**

Notwithstanding any other provision of an award, the non-Federal entity must not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

## **XX. Monitoring and Reporting Requirements**

### Monitoring

The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. Per Section 2 CFR 200.328 [http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1#se2.1.200\\_1328](http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1#se2.1.200_1328).

Annual Reconciliation of Continuing Assistance Awards. DOS must reconcile multi-year awards at least annually and evaluate program performance and financial reports. Items to be reviewed include a comparison of the non-Federal entity's work performance to its progress reports and project expenditures. See Section 7 of the U.S. Department of State Award Specific Provisions for details regarding reporting and monitoring.

### Federal Funding Accountability and Transparency Act (FFATA) Reporting Procedures

Awards that are deemed 'sensitive' and therefore do not require FFATA reporting will be designated by a provision in Section 7 of the U.S. Department of State Award Specific provisions stating that this award is not subject to the Federal Funding Accountability and Transparency Act (FFATA) sub-award reporting requirements as outlined in the Office of Management and Budgets (OMB) guidance issued August 27, 2010.

### Reporting of first-tier sub awards.

1. Applicability. Unless the non-Federal entity is exempt as provided under exemptions of this award term, the non-Federal entity must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in

[section 1512\(a\)\(2\)](#) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a sub award to an entity (see definitions of this award term).

2. Where and when to report.
  - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsr.gov>.
  - ii. For sub award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. The non-Federal entity must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

### **Reporting Total Compensation of Non-Federal entity Executives.**

1. Applicability and what to report. the non-Federal entity must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if -
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, the non-Federal entity received—
    - (A) 80 percent or more of the annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and sub awards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and sub awards); and
    - (C) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or [section 6104](#) of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
2. Where and when to report. The non-Federal entity must report executive total compensation described in paragraph 1. of this award term:
  - i. As part of your registration profile at <http://www.sam.gov>.
  - ii. By the end of the month following the month in which this award is made, and annually thereafter.

### **Reporting of Total Compensation of Sub non-Federal entity Executives.**

1. Applicability and what to report. Unless the non-Federal entity is exempt as provided in exemptions of this award term, for each first-tier sub non-Federal entity under this award, the non-Federal entity shall report the names and total compensation of each of the sub non-Federal entity's five most highly compensated executives for the sub non-Federal entity's preceding completed fiscal year, if—
  - i. in the sub non-Federal entity's preceding fiscal year, the sub non-Federal entity received—

- A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and sub awards); and
  - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and sub awards); and
  - C. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or [section 6104](#) of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. The non-Federal entity must report sub non-Federal entity executive total compensation described in paragraph 1. of this award term:
- i. To the non-Federal entity.
  - ii. By the end of the month following the month during which the sub award is made. For example, if a sub award is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the non-Federal entity must report any required compensation information of the sub non-Federal entity by November 30 of that year.

### **Exemptions**

If, in the previous tax year, gross income, from all sources, was under \$300,000, the non-Federal entity are exempt from the requirements to report: Sub awards; and the total compensation of the five most highly compensated executives of any sub non-Federal entity.

### **Definitions.**

#### **For purposes of this award term:**

- 1. Entity means all of the following, as defined in [2 CFR part 25](#):
  - i. A Governmental organization, which is a State, local government, or Indian tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a sub non-Federal entity under an award or sub award to a non-Federal entity.
- 2. Executive means officers, managing partners, or any other employees in management positions.
- 3. Sub award:
  - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the non-Federal entity award to an eligible sub non-Federal entity.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program.
  - iii. A sub award may be provided through any legal agreement, including an agreement that you or a sub non-Federal entity considers a contract.

4. Sub non-Federal entity means an entity that:
  - i. Receives a sub-award from you (the non-Federal entity) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the sub award.
5. Total compensation means the cash and noncash dollar value earned by the executive during the non-Federal entity's or sub non-Federal entity's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards [No. 123 \(Revised 2004\) \(FAS 123R\)](#), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax-qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **XXI. Post-Award Requirements for Closeout**

Closeout procedures require:

1. submission by the grant non-Federal entity of final financial and program reports within ninety (90) calendar days after the project period end date;
2. reconciliation of all cost or expenditure discrepancies;
3. prompt payment of allowable costs;
4. immediate collection of any unexpended funds or disallowed costs;
5. de-obligation of excess funds; and
6. disposition of property and/or equipment acquired under the award.

The non-Federal entity must make every effort to obtain its Final Indirect Rate from its cognizant agency. The settlement for any upward or downward adjustment to the Federal share of costs for provisional NICRA rates are based on the non-Federal entity's submission of its Final [SF-425](#) and, for rate increases, the availability of funds remaining in the award obligation. Unrecovered indirect costs may be considered cost share or matching with prior approval of the Grants Officer. Note that the non-Federal entity must be able to substantiate any cost share.

If the non-Federal entity organization does not have its Final Indirect Rate within 12 months after the end of the project period end date, the Grants Officer shall proceed with close-out after which all funds remaining in the obligation shall be de-obligated.

## **XXII. Retention and Access Requirements for Records**

The non-Federal entity must maintain financial records, supporting documents, statistical records, and all other records pertinent to an award for a period of three years from the date of submission of the final expenditure report. Exceptions to the three-year rule are referenced in [2 CFR 200.333](#). For awards that are renewed quarterly or annually, the retention period is from the date of the submission of the quarterly or annual financial report as authorized by the Department. The Department must request transfer of certain records to its custody from non-Federal entities when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, DOS may arrange for non-Federal entities to retain any records that are continuously needed for joint use.

Timely and Unrestricted Access. DOS authorized officials, the Inspector General, Comptroller General, or any of their duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of non-Federal entities that are pertinent to the award, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to a non-Federal entity's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

## **XXIII. Audits**

For all DOS awards to a U.S. based non-federal entity, regardless of business type, the non-Federal entities are subject to the audit requirements found in [2 CFR Part 200 Subpart F](#). In addition, the non-Federal entities are subject to the audit requirements found in the Single Audit Act of 1984, 31 U.S.C. 7501-7507.

Non-Federal entities that expend \$750,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the revised circular.

The Inspector General or any of his or her duly authorized representatives shall have access to any pertinent books, documents, papers and records of the non-Federal entity. Information accessible to the Inspector General includes written, printed, recorded, produced, or reproduced by any mechanical, magnetic, or other process or medium. DOS reserves the right to make audits, inspections, excerpts, transcriptions or other examinations as authorized by law of the non-Federal entities' documents and facilities.

The data collection form and the reporting package shall be submitted electronically to the Federal Audit Clearinghouse (<https://harvester.census.gov/sac> ).

DOS and its authorized representatives have the legally enforceable right to examine, audit, and copy, at any reasonable time, all records in DOS possession pertaining to the award.

### **Audits of Foreign Non-Federal entity Organizations**

All Foreign organizations that expend \$750,000 or more in a fiscal year in Federal awards must perform an independent, non-Federal entity-contracted Single Audit or Program Specific Audit.

Program-specific Audit – means an audit of one Federal award program. Single Audit – means an audit which includes both the entity’s financial statements and the Federal Awards to be conducted in accordance with [Generally Accepted Government Auditing Standards \(GAGAS\)](#).

The audits must be independently and professionally executed in accordance with GAGAS either prescribed by a government’s Supreme Audit Institution with auditing standards approved by the Comptroller General of the United States, or in accordance with the host country’s laws or adopted by the host country’s public accountants or associations of public accountants, together with generally accepted international auditing standards. However, foreign entity audits consistent with International Standards for Auditing or other auditing standards are acceptable with the Grants Officer’s approval.

For sub-non-Federal entities expending \$750,000 or more in Department of State award funding during their fiscal year, Department of State standard audit provisions require that Prime non-Federal entities certify that audits of sub-non-Federal entities are performed annually and according to the standards described above.

The cost of audits may be charged either as an allowable direct cost to the award, or included in the organizations established indirect costs in the award’s detailed budget.

### **XXIV. Debarment and Suspension**

Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

1. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in [2 CFR Part 180 subparts A Through I](#) and [2 CFR Part 601](#).
2. When more than one agency has an interest in the debarment or suspension of a non-Federal entity, the Interagency Committee on Debarment and Suspension, established under [Executive Order 12549](#), and authorized by [Section 873 of the National Defense Authorization Act, 2009 \(P. L. 110-417\)](#), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension, debarment, or related administrative action by any agency.

The non-Federal entity certifies to the best of its knowledge and belief that it and its principals:



1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this award.

## **XXV. Termination**

Awards may be terminated in whole or in part if any of the circumstances stated below apply:

### National Security or Foreign Policy Interests

By DOS, if at any time DOS determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance is not consistent with the national security or foreign policy interests of the United States, or would be in violation of an applicable law. In such cases, DOS may, following notice to the non-Federal entity, suspend or terminate the award in whole or in part and prohibit the non-Federal entity from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension.

### By Mutual Agreement

When DOS wishes to terminate a project, the GO will issue, in writing, a termination notice to the non-Federal entity's authorized representative with a copy to the project manager and the GOR. The non-Federal entities may terminate their performance of a project in whole or in part. When both parties agree that continuation of the project would not produce results commensurate with further expenditure of funds or for any other reason, the award may be terminated by mutual consent. The non-Federal entities may terminate the project after the authorized representative advises the GO in writing; and concurrently sends a copy to the GOR. Within 30 days after receipt of a request by either party for termination by mutual agreement, the other party will provide an

appropriate written response. The two parties must agree upon the termination conditions, including the effective date, and, in the case of partial termination, the portion to be terminated. The non-Federal entity must not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. DOS will allow full credit to the non-Federal entities for the Federal Share of the obligations that cannot be cancelled properly incurred by the non-Federal entities prior to termination.

#### For Cause

DOS reserves the right to terminate the award in whole or in part at any time before the project period end date, whenever it is determined that the non-Federal entities have failed to comply with the conditions of the award. However, if DOS determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety.

DOS must promptly notify the non-Federal entities in writing of the determination and reasons for the termination, together with the effective date. Payments made to non-Federal entities or recoveries by DOS awards terminated for cause must be in accordance with the legal rights and liabilities of the parties.

## **XXVI. Certification Regarding Lobbying**

As required by [Section 1352, Title 31 of the U.S. Code](#), and implemented at [2 CFR Part 418](#), for persons entering into a grant or cooperative agreement over \$100,000, the applicant certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Cooperative Agreement, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all non-Federal entities shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **XXVII. Section 504 of the Rehabilitation Act**

[Section 504 of the Rehabilitation Act](#) provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance. A non-Federal entity of federal financial assistance must provide programs and services in a manner that does not discriminate based on disability and ensures equal access and opportunity for people with disabilities.

For the purpose of [Section 504](#), the term individual with a disability means any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such impairment, or (c) is regarded as having such impairment.

## **XXVIII. Awards to Faith-Based and Community Organizations**

The non-Federal entity may not discriminate against any beneficiary or prospective beneficiary under this award on the basis of religion or belief:

Accordingly, in providing services supported in whole or in part by this agreement or in its outreach activities related to such services, the non-Federal entity may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Unless specifically authorized by the Department of State, non-Federal entities that engages in explicitly religious activities, including activities that involve overt religious content such as *worship, religious instruction, and proselytization*, must perform such activities and offer such services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such explicitly religious activities must be voluntary.

If the non-Federal entity makes sub-awards under this agreement, faith-based organizations should be eligible to participate on the same basis as other organizations, and should not be discriminated against on the basis of their religious character or affiliation.

## **XXIX. Religious Persecution**

The non-Federal entity must ensure that its personnel take into account in their work the considerations reflected in the International Religious Freedom Act concerning country-specific conditions, the right to freedom of religion, methods of religious persecution practiced in foreign

countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

### **XXX. Prohibition on Abortion Related Activities**

The Recipient agrees that none of the funds provided by this award shall be used to issue grant funds to lobby for or against abortion. The recipient agrees that none of the funds provided by this award shall be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.

### **XXXI. Minority Business Participation, Executive Order 12432**

In accordance with [Executive Order 12432](#), Minority Business Enterprise Development, DOS encourages the non-Federal entities to utilize minority business enterprises in the performance of the award. When contracting for any supplies, services, research, or construction under the award, the non-Federal entities must make their best efforts to solicit bids, proposals, or quotations from minority business enterprises.

A minority business enterprise is defined as a business that is at least 51 percent owned by one or more minority individuals, or in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more minority individuals. The daily business operations are likewise managed by a minority owner. A minority individual is defined as a U.S. citizen who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of this group without regard to his or her individual qualities. Such groups include, but are not limited to: Black [African] Americans, Hispanic Americans, Native Americans, and Asian-Pacific Americans.

### **XXXI. Trafficking in Persons**

#### **1. Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - . Implements section 106(g) of [the Trafficking Victims Protection Act of 2000 \(TVPA\), as amended \(22 U.S.C. 7104\(g\)\)](#), and
  - i. Is in addition to all other remedies for noncompliance that are available to us under this award.
2. You must include the requirements of this award term in any subaward you make to a private entity.

#### **3. Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
- 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
  - ii. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - iii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
    - 1. Associated with performance under this award; or
    - 2. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in [2 CFR part 180](#), “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency at [2 CFR part 376](#).
- 4. **Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - ii. Associated with performance under this award; or
  - 3. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in [2 CFR part 180](#), “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency [at 2 CFR part 376](#).
- 5. **Definitions.** For purposes of this award term:
  - 1. “Employee” means either:
    - . An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - i. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - 3. “Private entity”:

- . Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in [2 CFR 175.25](#).
- i. Includes:
  - 1. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at [2 CFR 175.25\(b\)](#).
  - 2. A for-profit organization.
- 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended ([22 U.S.C. 7102](#))

## **XXXII. Blocking Property and Prohibiting Transactions Who Commit, Threaten To Commit, or Support Terrorism, Executive Order 13224**

[Executive Order 13224](#) designated certain individuals and entities that commit or pose a significant risk of committing terrorist acts and authorized the Secretary of State to designate additional individuals and entities.

The Order also authorized the Secretary of the Treasury to designate additional individuals and entities that provide support or services to, are owned or controlled by, act for or on behalf of, or are “otherwise associated with,” an individual or entity who has been designated in or under the order. All property and interests in property of the individual or entity in the United States or in the possession or control of United States persons are blocked. The order prohibits all transactions and dealings in blocked property or interests in the United States or by United States persons, and also prohibits transactions with, and provision of support for, individuals or entities listed in or subject to the Order.

Non-Federal entities should be aware of [Executive Order 13224](#) and the names of the individuals and entities designated thereunder. A list of these names can be found in the exclusions section of the SAM.gov. The web site is: <http://www.sam.gov>.

Non-Federal entities are reminded that U.S. Executive Order and U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the non-Federal entity/contractor to ensure compliance with these Executive Orders and laws.