

Department of Justice

§ 2867.437

**Subpart C—Responsibilities of Participants Regarding Transactions**

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

**§ 2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?**

**§ 2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

A participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, the communication must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

**Subparts E–J [Reserved]**

**PARTS 2868–2899 [RESERVED]**



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**PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

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AUTHORITY: 5 U.S.C. 301; 2 CFR 200.

SOURCE: 79 FR 76081, Dec. 19, 2014, unless otherwise noted.

**Subpart A—Acronyms and Definitions**

**§ 2900.1 Budget.**

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal Awarding agency specifies as requiring prior approval. See §200.407 and §2900.16 for more information about prior approval. (See 2 CFR 200.8)

[80 FR 81440, Dec. 30, 2015]

**§ 2900.2 Non-Federal entity.**

In the DOL, *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (See 2 CFR 200.69)

**§ 2900.3 Questioned cost.**

In the DOL, in addition to the guidance contained in 2 CFR 200.84, a *Questioned cost* means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit or monitoring finding:

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

[79 FR 76081, Dec. 19, 2014, as amended at 80 FR 81440, Dec. 30, 2015]

**Subpart B—General Provisions**

**§ 2900.4 Adoption of 2 CFR Part 200.**

Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal

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Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Department of Labor policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in 20 and 29 CFR.

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

#### **§ 2900.5 Federal awarding agency review of merit of proposals.**

In the DOL, audits and monitoring reports containing findings, issues of non-compliance or questioned costs are in addition to reports and findings from audits performed under Subpart F—Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits. (See 2 CFR 200.205(c)(4)).

[80 FR 81440, Dec. 30, 2015]

### **Subpart D—Post Federal Award Requirements**

#### **§ 2900.6 Advance Payment.**

In the DOL, except as authorized under 2 CFR 200.207, specific conditions, the non-Federal entity must be paid in advance. (See 2 CFR 200.305(b)(1)).

#### **§ 2900.7 Payment.**

In addition to the guidance set forth in 2 CFR 200.305(b), for Federal awards from the Department of Labor, the non-Federal entity should liquidate existing advances before it requests additional advances.

[80 FR 81440, Dec. 30, 2015]

#### **§ 2900.8 Cost sharing or matching.**

In addition to the guidance set forth in 2 CFR 200.306(b), for Federal awards from the Department of Labor, the non-Federal entity accounts for funds used for cost sharing or match within their accounting systems as the funds are expended.

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#### **§ 2900.9 Revision of budget and program plans.**

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal awarding agency specifies as requiring prior approval (see 2 CFR 200.407 and 2 CFR 200.308(a)).

#### **§ 2900.10 Prior approval requests.**

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval actions at least 30 days prior to the effective date of the requested action.

#### **§ 2900.11 Revision of budget and program plans including extension of the period of performance.**

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval for an extension to the period of performance.

#### **§ 2900.12 Revision of budget and program plans approval from Grant Officers.**

In the DOL, unless otherwise noted in the Grant Agreement, prior written approval must come from the Grant Officer (See 2 CFR 200.308(d)).

#### **§ 2900.13 Intangible property.**

In addition to the guidance set forth in 2 CFR 200.315(d), the Department of Labor requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the recipient.

[80 FR 81440, Dec. 30, 2015]

#### **§ 2900.14 Financial reporting.**

In addition to the guidance set forth in 2 CFR 200.327, for Federal awards from the Department of Labor, the DOL awarding agency will prescribe whether the report will be on a cash or an accrual basis. If the DOL awarding

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agency requires reporting on an accrual basis and the recipient's accounting system is not on the accrual basis, the recipient will not be required to convert its accounting system, but must develop and report such accrual information through best estimates based on an analysis of the documentation on hand.

### § 2900.15 Closeout.

In addition to the guidance set forth in 2 CFR 200.343(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all obligations and/or accrued expenditures incurred under the Federal award. For non-Federal entities reporting on an accrual basis and operating on an expenditure period, unless otherwise noted in the grant agreement, the only liquidation that can occur during closeout is the liquidation of accrued expenditures (NOT obligations) for goods and/or services received during the grant period.

[80 FR 81441, Dec. 30, 2015]

## Subpart E—Cost Principles

### § 2900.16 Prior written approval (prior approval).

In addition to the guidance set forth in 2 CFR 200.407, for Federal awards from the Department of Labor, the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur. Unless otherwise noted in the grant agreement, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). Items included in the statement of work or budget as awarded does not constitute prior approval.

[80 FR 81441, Dec. 30, 2015]

### § 2900.17 Adjustment of negotiated IDC rates.

In the DOL, in addition to the requirements under 2 CFR 200.411(a)(2), adjustments to indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of negotiated rate agreement.

### § 2900.18 Contingency provisions.

In addition to the guidance set forth in 2 CFR 200.433(c), for Federal awards from the Department of Labor, excepted citations include 2 CFR 200.333 Retention requirements for records, and 2 CFR 200.334 Requests for transfers of records.

### § 2900.19 Student activity costs.

In the Department of Labor, the provisions of 2 CFR 200.469 apply unless the activities meet a program requirement and have prior written approval from the Federal awarding agency.

## Subpart F—Audit Requirements

### § 2900.20 Federal Agency Audit Responsibilities.

In the DOL, in addition to 2 CFR 200.513, the department employs a collaborative resolution process with non-federal entities.

(a) *Department of Labor Cooperative Audit Resolution Process.* The DOL official(s) responsible for resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(1) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(2) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the

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decisions of the responsible DOL official(s).

(3) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(i) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(ii) Lists those matters upon which the parties continue to disagree;

(iii) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Lists any sanctions and required corrective actions; and

(v) Sets forth any appeal rights.

(4) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

[79 FR 76081, Dec. 19, 2014, as amended at 80 FR 81441, Dec. 30, 2015]

### § 2900.21 Management decision.

In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General and is extended an additional six months when the audit contains a finding involving a sub-recipient of the pass-through entity being audited. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See 2 CFR 200.521(d)).

[80 FR 81441, Dec. 30, 2015]

### § 2900.22 Audit Requirements—Appeal Process for Department of Labor Recipients.

In the DOL, the DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards

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within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) Request for hearing. Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.* (1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW., Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.



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(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

**PARTS 2901-2999 [RESERVED]**