



**USAID**  
FROM THE AMERICAN PEOPLE

# Mandatory Standard Provisions for Fixed Obligation Grants to Nongovernmental Recipients

A Mandatory Reference for ADS Chapter 303

New Edition Date: 03/12/2012  
Responsible Office: M/OAA/P  
File Name: 303mat\_031212

# Mandatory Standard Provisions for Fixed Obligation Grants to Nongovernmental Recipients

I. MANDATORY STANDARD PROVISIONS FOR FIXED OBLIGATION GRANTS TO NONGOVERNMENTAL RECIPIENTS.....	3
1. TERMINATION AND SUSPENSION (FEBRUARY 2012) .....	3
2. DISPUTES (FEBRUARY 2012) .....	3
3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JANUARY 2004).....	4
4. DRUG-FREE WORKPLACE (FEBRUARY 2012).....	5
5. NONLIABILITY (NOVEMBER 1985) .....	5
6. AMENDMENT (OCTOBER 1998).....	6
7. NOTICES (OCTOBER 1998) .....	6
8. METRIC SYSTEM OF MEASUREMENT (AUGUST 1992).....	6
9. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS (December 2009).....	7
10. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING (MARCH 2002).....	8
11. MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (DECEMBER 2005).....	9
12. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006) .....	14
13. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010) .....	15
14. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010) .....	17
15. TRAFFICKING IN PERSONS (OCTOBER 2010).....	21

**I. MANDATORY STANDARD PROVISIONS FOR FIXED OBLIGATION GRANTS TO NONGOVERNMENTAL RECIPIENTS**

**1. TERMINATION AND SUSPENSION (FEBRUARY 2012)**

- a. This award may be terminated at any time, in whole or in part, by either party upon receipt of written notification by the other party.
  
- e. Termination and Suspension Procedures. Upon receipt of, and in accordance with a termination notice as specified above, the recipient must take immediate action to minimize all expenditures and obligations financed by this award and must cancel such unliquidated obligations whenever possible. Except as provided below, the recipient is not entitled to any costs incurred after the effective date of termination.

The recipient must within 30 calendar days after the effective date of such termination repay to the U.S. Government all unliquidated funds not otherwise obligated by a legally binding transaction applicable to this award that cannot be cancelled without penalty by the recipient. Should the funds paid by USAID to the recipient prior to the effective date of the termination of this award be insufficient to cover the recipient's obligations in a legally binding transaction applicable to this award, the recipient may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The Agreement Officer must determine the amount(s) to be paid by USAID to the recipient under such claim in accordance with the applicable Cost Principles.

This provision must be included in all subagreements.

[END OF PROVISION]

**2. DISPUTES (FEBRUARY 2012)**

- a. Any dispute under this award must be decided by the USAID Agreement Officer. The Agreement Officer must furnish the recipient a written copy of the decision.

[END OF PROVISION]

### **3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JANUARY 2004)**

- a. The recipient agrees to notify the Agreement Officer immediately upon learning that it or any of its principals:
- (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
  - (2) Have been convicted within the preceding three-year period preceding this proposal; 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, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
  - (3) Are 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 in paragraph a.(2); and
  - (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.
- b. The recipient agrees that, unless authorized by the Agreement Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the Excluded Parties List System ([www.epls.gov/](http://www.epls.gov/)). The recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

*DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION  
(DECEMBER 2003)*

*The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.*

- c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in 22 CFR 208.

[END OF PROVISION]

**4. DRUG-FREE WORKPLACE (FEBRUARY 2012)**

- a. You as the recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of 782, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

[END OF PROVISION]

**5. NONLIABILITY (NOVEMBER 1985)**

USAID does not assume liability for any third party claims for damages arising out of this award.

[END OF PROVISION]

## **6. AMENDMENT (OCTOBER 1998)**

The award may be amended by formal modifications to the basic award document or by means of an exchange of letters or forms between the Agreement Officer and an appropriate official of the recipient.

[END OF PROVISION]

## **7. NOTICES (OCTOBER 1998)**

Any notice given by USAID or the recipient is sufficient only if in writing and delivered in person or mailed as follows:

- (1) To the USAID Agreement Officer and Agreement Officer's Technical Representative (AOTR), at the addresses specified in the award; and
- (2) To recipient, at recipient's address shown in the award, or to such other address designated within the award.

Notices are effective when delivered in accordance with this provision, or on effective date of the notice, whichever is later.

[END OF PROVISION]

## **8. METRIC SYSTEM OF MEASUREMENT (AUGUST 1992)**

Wherever measurements are required or authorized, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Agreement Officer in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

[END OF PROVISION]

## **9. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS (December 2009)**

- a. All the requirements of 22 CFR 205, Participation By Religious Organizations In USAID Programs, are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in 22 CFR 226. The requirements of 22 CFR 205 apply to both religious and secular organizations.
- b. If the recipient makes subawards under this agreement, faith-based organizations must be eligible to participate on the same basis as other organizations, and must not be discriminated for or against on the basis of their religious character or affiliation.
- c. The recipient must not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in inherently religious activities, such as worship, religious instruction, and proselytization, it must offer those services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such inherently religious activities must be voluntary. These restrictions do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.
- d. The recipient must not use USAID funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with applicable cost accounting principles. Sanctuaries, chapels, or other rooms that the recipient uses as its principal place of worship are ineligible for acquisition, construction, rehabilitation, or improvements using USAID funds.
- e. The recipient may not discriminate against any beneficiary or potential beneficiary under this award on the basis of religion or religious belief. Accordingly, in providing services supported, in whole or in part, by this agreement or in its outreach activities related to such services, the recipient 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 actively participate in a religious practice.

- f. When the recipient is a religious organization, the recipient
- (1) Retains its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization.
  - (2) Retains its authority over its internal governance and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
  - (3) Retains its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1.
  - (4) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols.
- g. The Secretary of State may waive the requirements of this provision in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

[END OF PROVISION]

## **10. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING (MARCH 2002)**

The recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts/subawards issued under this agreement

[END OF PROVISION]



## 11. MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (DECEMBER 2005)

### a. Definitions

**Commodities** mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and nondeliverable items for recipient's internal use, in administration of the USAID-funded grant, cooperative agreement, or other agreement or subagreement.

**Principal Officer** means the most senior officer in a USAID Operating Unit in the field, for example, USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For nonpresence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the nonpresence country, or in the absence of such a responsible Operating Unit, the Principal U.S Diplomatic Officer in the nonpresence country exercising delegated authority from USAID.

**Programs** mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

**Projects** include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

**Public communications** are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID-funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences, and so forth.

**Subrecipient** means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 CFR 226.2.

**Technical Assistance** means the provision of funds, goods, services, or other foreign assistance, such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a

Development Objective – as opposed to the internal management of the foreign assistance program.

**USAID Identity (Identity)** means the official marking for the United States Agency for International Development (USAID), comprised of the USAID logo or seal and new brandmark, with the tagline that clearly communicates that our assistance is “from the American people.” The USAID Identity is available on the USAID Web site at [www.usaid.gov/branding](http://www.usaid.gov/branding) and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, or cooperative agreements, or other assistance awards.

b. Marking of Program Deliverables

- (1) All recipients must mark appropriately all overseas programs, projects, activities, public communications, and commodities partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's, or any other third party's identity or logo.
- (2) The recipient will mark all program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) with the USAID Identity. The recipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient must install a permanent, durable sign, plaque or other marking.
- (3) The recipient will mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.
- (4) The recipient will appropriately mark events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials, such as signs and banners, with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, the recipient is encouraged otherwise to acknowledge USAID and the American people's support.

- (5) The recipient will mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies, and other materials funded by USAID, and their export packaging with the USAID Identity.
- (6) The Agreement Officer may require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant, and as appropriate depending on the audience, program goals, and materials produced.
- (7) The Agreement Officer may require marking with the USAID Identity in the event that the recipient does not choose to mark with its own identity or logo.
- (8) The Agreement Officer may require a preproduction review of USAID-funded public communications and program materials for compliance with the approved Marking Plan.
- (9) Subrecipients. To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID-funded grants and cooperative agreements or other assistance awards will include the USAID-approved marking provision in any USAID-funded subaward, as follows:

*"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's, or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."*

- (10) Any 'public communications', as defined in 22 CFR 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

*"This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government."*

- (11) The recipient will provide the Agreement Officer's Technical Representative (AOTR) or other USAID personnel designated in the grant or cooperative agreement with two copies of all program and communications materials produced under the award. In addition, the recipient will submit one electronic or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

c. Implementation of Marking Requirements

- (1) When the grant or cooperative agreement contains an approved Marking Plan, the recipient will implement the requirements of this provision following the approved Marking Plan.
- (2) When the grant or cooperative agreement does not contain an approved Marking Plan, the recipient will propose and submit a plan for implementing the requirements of this provision within **[Agreement Officer fill-in]** days after the effective date of this provision. The plan will include:
- (i) A description of the program deliverables specified in paragraph (b) of this provision that the recipient will produce as a part of the grant or cooperative agreement, and which will visibly bear the USAID Identity.
  - (ii) The type of marking and what materials the applicant uses to mark the program deliverables with the USAID Identity,
  - (iii) When in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking.
- (3) The recipient may request program deliverables not be marked with the USAID Identity by identifying the program deliverables and providing a rationale for not marking these program deliverables. Program deliverables may be exempted from USAID marking requirements when:
- (i) USAID marking requirements would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;
  - (ii) USAID marking requirements would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;

- (iii) USAID marking requirements would undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as “by” or “from” a cooperating country ministry or government official;
  - (iv) USAID marking requirements would impair the functionality of an item;
  - (v) USAID marking requirements would incur substantial costs or be impractical;
  - (vi) USAID marking requirements would offend local cultural or social norms, or be considered inappropriate;
  - (vii) USAID marking requirements would conflict with international law.
- (4) The proposed plan for implementing the requirements of this provision, including any proposed exemptions, will be negotiated within the time specified by the Agreement Officer after receipt of the proposed plan. Failure to negotiate an approved plan with the time specified by the Agreement Officer may be considered as noncompliance with the requirements of this provision.

d. Waivers

- (1) The recipient may request a waiver of the Marking Plan or of the marking requirements of this provision, in whole or in part, for each program, project, activity, public communication or commodity, or, in exceptional circumstances, for a region or country, when USAID required marking would pose compelling political, safety, or security concerns, or when marking would have an adverse impact in the cooperating country. The recipient will submit the request through the Agreement Officer’s Technical Representative (AOTR). The Principal Officer is responsible for approvals or disapprovals of waiver requests.
- (2) The request will describe the compelling political, safety, security concerns, or adverse impact that require a waiver, detail the circumstances and rationale for the waiver, detail the specific requirements to be waived, the specific portion of the Marking Plan to be waived, or specific marking to be waived, and include a description of how program materials will be marked (if at all) if the USAID Identity is removed. The request should also provide a rationale for any use of recipient’s own identity/logo or that of a third party on materials that will be subject to the waiver.

- (3) Approved waivers are not limited in duration but are subject to Principal Officer review at any time, due to changed circumstances.
- (4) Approved waivers “flow down” to recipients of subawards, unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.
- (5) Determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator (AA). The recipient may appeal by submitting a written request to reconsider the Principal Officer’s waiver determination to the cognizant AA.

e. Non-retroactivity

The requirements of this provision do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of this provision do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.

[END OF PROVISION]

## **12. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)**

### **Requirements for Voluntary Sterilization Programs**

- (1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

### **Prohibition on Abortion-Related Activities:**

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term “motivate”, as it

relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.

[END OF PROVISION]

### **13. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)**

**APPLICABILITY:** *This provision is required in accordance with 2 CFR 25, Award Term for Central Contractor Registration and Universal Identifier. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

#### **CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)**

- a. **Requirement for Central Contractor Registration (CCR).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently, if required by changes in your information or another award term.
- b. **Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:
  - (1) Must notify potential subrecipients that no entity (see definition in paragraph c. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
  - (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

**c. Definitions.** For purposes of this award term:

- (1) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at [www.ccr.gov/](http://www.ccr.gov/)).
- (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at [fedgov.dnb.com/webform](http://fedgov.dnb.com/webform)).
- (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR 25, subpart C:
  - (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; and
  - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (4) Subaward:
  - (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 recipient, award to an eligible subrecipient.
  - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.



- (5) Subrecipient means an entity that:
  - (i) Receives a subaward from you under this award; and
  - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

[END OF PROVISION]

## **14. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)**

**APPLICABILITY:** *This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

### **REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)**

#### **a. Reporting of First-Tier Subawards.**

- (1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that 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 subaward to an entity (see definitions in paragraph e. 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 [www.fsrs.gov](http://www.fsrs.gov).
  - (ii) For subaward 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. You must report the information about each obligating action that the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov) specify.

**b. Reporting Total Compensation of Recipient Executives.**

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

**c. Reporting of Total Compensation of Subrecipient Executives.**

- (1) Applicability and what to report. Unless you are exempt, as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

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

**d. Exemptions.**

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

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

**e. Definitions.**

For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR 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 subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
  - (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 recipient award to an eligible subrecipient.
  - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- (4) Subrecipient means an entity that:
  - (i) Receives a subaward from you (the recipient) under this award; and
  - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

- (5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient'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 nonequity 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 (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[END OF PROVISION]

## **15. TRAFFICKING IN PERSONS (OCTOBER 2010)**

**APPLICABILITY:** *This provision is required in accordance with 2 CFR 175, Award Term for Trafficking in Persons. AOs must include this provision in all new awards. AOs must modify existing awards to include this provision at the earliest practicable opportunity.*

### **TRAFFICKING IN PERSONS (OCTOBER 2010)**

**a. 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 —
  - (i) Is determined to have violated a prohibition in paragraph a. (1) of this award term; or
  - (ii) 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—
    - (A) Associated with performance under this award; or
    - (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

**b. Provisions applicable to a recipient other than a private entity.**

- (1) We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - (i) Is determined to have violated an applicable prohibition in paragraph a. (1) of this award term; or
  - (ii) 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—

- (A) Associated with performance under this award; or
- (B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

**c. Provisions applicable to any recipient.**

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

**d. Definitions.** For purposes of this provision:

- (1) “Employee” means either:
  - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - (ii) 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”:
- (i) 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(b).
  - (ii) Includes:
    - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - (B) A for-profit organization.
- (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).

[END OF PROVISION]

**[END OF MANDATORY PROVISIONS]**

303mat\_031212