

## 2 CFR 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

AUTHORITY : Pub. L. 109–282; 31 U.S.C. 6102.

SOURCE : 75 FR 55669, Sept. 14, 2010, unless otherwise noted.

### Subpart A—General

#### § 170.100 Purposes of this part.

This part provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252, hereafter referred to as "the Transparency Act".

[85 FR 49525, Aug. 13, 2020]

#### § 170.105 Types of awards to which this part applies.

This part applies to Federal awarding agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

[85 FR 49525, Aug. 13, 2020]

#### § 170.110 Types of entities to which this part applies.

(a) General. Through a Federal awarding agency's implementation of the guidance in this part, this part applies to recipients, other than those exempted by law or excepted in accordance with paragraphs (b) and (c) of this section, that--

- (1) Apply for or receive Federal awards; or
- (2) Receive subawards under Federal awards.

(b) Exceptions.

(1) None of the requirements in this part apply to an individual who applies for or receives a Federal award as a natural person (i.e., unrelated to any business or nonprofit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of a non-Federal entity's five most highly compensated executives apply unless in the non-Federal entity's preceding fiscal year, it received--

- (i) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320 (and subawards); and
- (ii) \$25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320; and

(3) The public does not have access to information about the compensation of senior executives, unless otherwise publicly available, 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.

- (c) Exceptions for classes of Federal awards or recipients. OMB may allow exceptions for classes of Federal awards or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

[85 FR 49525, Aug. 13, 2020]

[end of Subpart a]

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## Subpart B—Policy

### § 170.200 Federal awarding agency reporting requirements.

- (a) Federal awarding agencies are required to publicly report Federal awards that equal or exceed the micro-purchase threshold and publish the required information on a public-facing, OMB-designated, governmentwide website and follow OMB guidance to support Transparency Act implementation.
- (b) Federal awarding agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

[85 FR 49525, Aug. 13, 2020]

### § 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

- (a) Each Federal awarding agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements, and is issued on or after the effective date of this part.
- (b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity that applies for Federal financial assistance and that does not have an exception under § 170.110(b) to have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

[85 FR 49526, Aug. 13, 2020]

### § 170.220 Award term.

- (a) To accomplish the purposes described in § 170.100, a Federal awarding agency must include the award term in appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.
- (b) A Federal awarding agency, consistent with paragraph (a) of this section, is not required to include the award term in appendix A to this part if it determines that there is no possibility that the total amount of Federal funding under the Federal award will equal or exceed \$30,000. However, the Federal awarding agency must subsequently modify the award to add the award term if changes in circumstances increase the total Federal funding under the award is anticipated to equal or exceed \$30,000 during the period of performance.

[85 FR 49526, Aug. 13, 2020]

[end of Subpart B]

## Subpart C—Definitions

### § 170.300 Federal agency.

*Federal agency* means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

[85 FR 49526, Aug. 13, 2020]

### § 170.301 Federal awarding agency.

*Federal awarding agency* has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

### § 170.305 Federal award.

*Federal award*, for the purposes of this part, means an award of Federal financial assistance that a recipient receives directly from a Federal awarding agency.

[85 FR 49526, Aug. 13, 2020]

### § 170.307 Foreign organization.

*Foreign organization* has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

### § 170.308 Foreign public entity.

*Foreign public entity* has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

### § 170.310 Non-Federal entity.

*Non-Federal entity* has the meaning given in 2 CFR 200.1 and also includes all of the following, for the purposes of this part:

- (a) A foreign organization;
- (b) A foreign public entity; and
- (c) A domestic or foreign for-profit organization.

[85 FR 49526, Aug. 13, 2020]

### § 170.315 Executive.

*Executive* means officers, managing partners, or any other employees in management positions.

### § 170.320 Federal financial assistance subject to the Transparency Act.

*Federal financial assistance subject to the Transparency Act* means assistance that non-Federal entities described in § 170.105 receive or administer in the form of—

- (a) Grants;
- (b) Cooperative agreements (which does not include cooperative research and development agreements pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));
- (c) Loans;
- (d) Loan guarantees;

- (e) Subsidies;
- (f) Insurance;
- (g) Food commodities;
- (h) Direct appropriations;
- (i) Assessed and voluntary contributions; and
- (j) Other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal funds.
- (k) Federal financial assistance subject to the Transparency Act, does not include--
  - (1) Technical assistance, which provides services in lieu of money;
  - (2) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;
  - (3) Any classified award; or
  - (4) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

[75 FR 55669, Sept. 14, 2010, as amended at 85 FR 49526, Aug. 13, 2020]

**§ 170.322 Recipient.**

*Recipient*, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award.

[85 FR 49526, Aug. 13, 2020]

**§ 170.325 Subaward.**

*Subaward* has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

**§ 170.330 Total compensation.**

*Total Compensation* has the meaning given in paragraph e.5 of the award term in Appendix A to this part.

[end of Subpart C]

## Pt. 170, App. A

### Appendix A to Part 170—Award term

#### I. Reporting Subawards and Executive Compensation.

##### 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 equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term). [Note: This paragraph is not numbered in the FR announcement nor in the eCFR, but given the appearance of paragraph 2, it seems appropriate to assume that this paragraph should be numbered accordingly. –ed.]
2. Where and when to report.
  - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrc.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 <http://www.fsrc.gov> specify.

##### b. Reporting total compensation of recipient executives for non-Federal entities.

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 Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
  - 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 <http://www.sec.gov/answers/excomp.htm>.)

[Appendix A.I.b. continues next page]

[continuing Appendix A.I.b.]

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 <https://www.sam.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 non-Federal entity subrecipient under this award, you shall 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 <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 (i.e., 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:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

[Appendix A.I. continues next page]

[continuing Appendix A.I.]

**e. Definitions.**

For purposes of this award term:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. *Non-Federal 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; and,
  - iv. A domestic or foreign for-profit organization
3. *Executive* means officers, managing partners, or any other employees in management positions.
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 2 CFR 200.331).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
5. *Subrecipient* means a non-Federal entity or Federal agency 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.
6. *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)). **[Note: "includes the following" is an artifact from the previous version, which listed 6 sub-paragraphs identifying the constituent elements of total compensation. The reference to 17 CFR 229.402(c)(2) now lists these in a more complicated format. Essentially, they are: salary, bonus, stock awards, option awards, non-equity incentive plan compensation, change in pension value and non-qualified deferred compensation earnings, and all other compensation. –ed.]**

[85 FR 49526, Aug. 13, 2020]

[end of Appendix A]