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Part II

Office of Management and Budget

2 CFR Part 1, et al.

Grants Policy Streamlining Overview and Guidance on Nonprocurement Debarment and Suspension and Cost Principles Guidance; Cost Principles for Educational Institutions (OMB Circular A-21), State, Local, and Indian Tribal Governments (OMB Circular A-87) and Non-Profit Organizations (OMB Circular A-122); Final Rules

OFFICE OF MANAGEMENT AND BUDGET**2 CFR Part 1****Grants Policy Streamlining Overview on Nonprocurement Debarment and Suspension and Cost Principles Guidance**

AGENCY: Office of Management and Budget.

ACTION: Publication of policy guidance in 2 CFR subtitle A.

SUMMARY: This document and the four **Federal Register** documents following it in this issue of the **Federal Register** are related to a broad initiative that established Title 2 of the Code of Federal Regulations (CFR) as the single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The **Federal Register** document that established Title 2 CFR (see the **SUPPLEMENTARY INFORMATION** section) describes this broad initiative. The initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, which is one objective of OMB and the Federal agencies in implementing the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

The **Federal Register** documents following this one publish four additional parts in subtitle A, 2 CFR. These four parts contain guidance to Federal agencies that presently is in three separate OMB circulars and one other OMB policy document. The four documents following this one are discussed further in the **SUPPLEMENTARY INFORMATION** section of this document.

This first document provides an overview for the sequence of the five **Federal Register** documents published by OMB in this issue of the **Federal Register**. It also makes changes to 2 CFR part 1, the part in 2 CFR that provides general information about the title. The changes conform part 1 with the four parts of OMB guidance added by the documents following this one.

DATES: The amendments this document makes to 2 CFR part 1 are effective on August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3053 (direct) or (202) 395–3993 (main office) and e-mail: ephillip@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On May 11, 2004, OMB established title 2 CFR

with two subtitles [69 FR 26276]. Subtitle A, “Government-wide Grants and Agreements,” contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, “Federal Agency Regulations for Grants and Agreements,” will contain Federal agencies’ regulatory implementation of the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions (for portions of the guidance applicable to procurement contracts, implementation for procurement will continue to be in the Federal Acquisition Regulation in title 48 CFR).

As stated in the **Federal Register** notice establishing title 2 CFR, OMB plans to publish its guidance in subtitle A of that title in two phases. In the first phase, OMB is relocating the circulars in their current form into chapter II of subtitle A. In the second phase, OMB will publish guidance in chapter I of subtitle A after: (1) Proposing for public comment any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106–107; and (2) resolving the comments and finalizing the guidance with the help of the working groups.

The four **Federal Register** documents following this one publish four OMB guidance documents in subtitle A. The first, which is the document immediately following this one, publishes the OMB guidance on nonprocurement debarment and suspension in subtitle A, chapter I, part 180. OMB is publishing this guidance in chapter I because the substance is up to date, and we therefore do not expect the interagency working groups implementing Public Law 106–107 to propose any changes to it in the near future. The guidance is up to date because it is substantively the same as the common rule that 33 Federal agencies recently updated [68 FR 66534, November 26, 2003] after resolving public comments.

The other three **Federal Register** documents published today relocate OMB Circulars A–21, A–87, and A–122, the OMB circulars with cost principles, in their current form, into chapter II of subtitle A. An interagency working group under Public Law 106–107 is still considering proposals for streamlining these circulars. We will move the circulars to chapter I after any streamlining is completed (any proposals for substantive change will be published first, with an opportunity for public comment).

Conforming changes to 2 CFR part 1. The publication of the OMB guidance

on nonprocurement debarment and suspension and OMB Circulars A–21, A–87 and A–122 as parts 180, 220, 225, and 230 in 2 CFR warrants conforming changes in §§ 1.205 and 1.215 of 2 CFR part 1. The amendment to § 1.215 adds references to the four new parts to the table in that section, to explain the relationship of the parts to their previous issuances as OMB circulars.

The amendments to § 1.205 clarify the statement in that section that the types of instruments subject to the guidance in subtitle A of 2 CFR vary from one part of the guidance to another. With the relocation of the cost principles in subtitle A, we are adding a statement to clarify that all portions of the guidance in subtitle A of 2 CFR apply to grants and cooperative agreements, some portions apply to other types of financial assistance or nonprocurement instruments, and some portions indirectly apply to procurement contracts. We are adding new paragraphs § 1.205(b) and (c) that give:

- The guidelines on debarment and suspension as an example of guidance that applies to nonprocurement instruments in general, and not just financial assistance; and
- The cost principles in 2 CFR parts 220, 225, and 230 as specific examples of guidance that applies to procurement, as well as financial assistance. Circulars A–21, A–87, and A–122 always have provided guidance to Federal agencies on costs that are allowable for reimbursement under procurement contracts to educational, governmental, and other nonprofit organizations, respectively. It should be noted, however, that the regulation formally imposing that requirement on Federal agencies’ contracts is not in 2 CFR but in subparts 31.3, 31.6, and 31.7 of 48 CFR part 31 in the Federal Acquisition Regulation (FAR).

List of Subjects*2 CFR Part 1*

Cooperative agreements, Grant programs, Grants administration.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

PART 1—[AMENDED]

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of

1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966—1970, p. 939.

■ 2. Section 1.205 is revised to read as follows:

§ 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another (note that each part identifies the types of instruments to which it applies). All portions of the guidance apply to grants and cooperative agreements, some portions also apply to other types of financial assistance or

nonprocurement instruments, and some portions also apply to procurement contracts. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all financial assistance and other nonprocurement transactions, and not just to grants and cooperative agreements.

(b) Cost principles in parts 220, 225 and 230 of this subtitle apply to procurement contracts, as well as to financial assistance, although those principles are implemented for procurement contracts through the Federal Acquisition Regulation in Title

48 of the CFR, rather than through Federal agency regulations on grants and agreements in this title.

■ 3. Section 1.215 is revised to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in . . .	On . . .	Previously was in . . .
(a) Chapter I, part 180	Nonprocurement debarment and suspension	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995). OMB Circular A-110.
(b) Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A-21. OMB Circular A-87.
(c) Chapter II, part 220	Cost principles for educational institutions	OMB Circular A-122.
(d) Chapter II, part 225	Cost principles for State, local, and Indian tribal governments.	
(e) Chapter II, part 230	Cost principles for non-profit organizations	
(f) [Reserved].		

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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 180 and 215

Guidance for Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Management and Budget.

ACTION: Interim final guidance.

SUMMARY: The Office of Management and Budget (OMB) is updating its guidance on nonprocurement debarment and suspension to conform to the common rule that 33 Federal agencies published on November 26, 2003. The agencies issued that common rule after resolving public comments received in response to a Notice of Proposed Rulemaking. In updating the guidance, the OMB is making two improvements to streamline the policy framework in this area.

First, we are issuing the guidance in a format that is suitable for Federal agency adoption. Agency adoption of the guidance will reduce the volume of Federal regulations on nonprocurement debarment and suspension, making it easier for the affected public to use, and easier and less expensive for the Federal Government to maintain.

Second, we are publishing the guidance in the recently established Title 2 of the Code of Federal Regulations (2 CFR). Locating it in 2 CFR will make it easier to find. Also, the OMB guidance will be co-located in the same title of the CFR as Federal agencies' implementing regulations that adopt the guidance. That is, consistent with the framework put in place when OMB established Title 2, each Federal agency will issue its implementing regulation in its chapter in Subtitle B of 2 CFR. This notice also makes minor changes to the previously issued 2 CFR part 215, to conform that part with the guidance published today.

DATES: The effective date for this interim final guidance is September 30, 2005. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by October 31, 2005.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: ephillip@omb.eop.gov. Please include "OMB suspension and debarment guidance" in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as

well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-3952.

Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-3053 (direct) or (202) 395-3993 (main office) and e-mail: ephillip@omb.eop.gov.

SUPPLEMENTARY INFORMATION: *Background.* The guidance updated by this notice originated with Executive Order (E.O.) 12549, "Debarment and Suspension." That Executive order, issued in 1986, gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive order authorized OMB to issue guidance on nonprocurement debarment and suspension. Section 3 directed agencies to issue implementing regulations consistent with the guidance.

The guidance has been revised twice since OMB first issued it in 1987 [52 FR 20360]. In 1988, when the agencies finalized a common rule to implement OMB's 1987 guidance, OMB revised its