OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 33
Requirements for Federal Funding Accountability and Transparency Act Implementation


ACTION: Proposed guidance to agencies.

SUMMARY: OMB proposes to issue guidance to agencies to establish requirements for federal financial assistance applicants, recipients, and subrecipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, hereafter referred to as “the Transparency Act” or “the Act”). An agency under the proposed guidance would require applicants other than individuals, with some specific exceptions, to have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the Central Contractor Registration (CCR) database. The guidance also provides standard wording for an award term that each agency would include in its financial assistance awards. The award term would require recipients and subrecipients that are subject to the policy to have DUNS numbers, maintain current CCR registrations, and report subaward data that the implementation of the Transparency Act requires. This proposed implementation of the requirement for reporting of subawards under federal financial assistance awards parallels the Federal Acquisition Regulation implementation of that Transparency Act reporting requirement for subcontracts under federal procurement contracts (72 FR 51306, September 6, 2007).

DATES: Comments are due on or before August 5, 2008.

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: Marguerite Pridgen at mpridgen@omb.eop.gov. Please include “Transparency Act Guidance” in the subject line and the full body of your comments in the text of the electronic message and not as 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 Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

Comments may also be sent via http://www.regulations.gov—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the Federal Register and that are open for comment. Simply type “Transparency Act Guidance” (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

All responses will be summarized and included in the request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: Marguerite.E.Pridgen@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Transparency Act

The Act requires the Office of Management and Budget (OMB) to ensure the existence and operation of a single Web site at which the public may access and search data on federal financial assistance awards. It:

• Specifies that data on federal agencies’ awards to non-federal entities are to be available at the Web site by January 1, 2008.

• Specifies that data on subawards under those federal awards are to be available by January 1, 2009.

• Exempts awards to individuals and individual transactions of less than $25,000.

The Act identifies sixteen specific data elements that the Web site must include for each federal award and authorizes OMB to specify additional elements for other relevant information. The sixteen elements the Act specifies are:

• The name of the entity receiving the award;

• The amount of the award;

• The transaction type;

• The funding agency;

• The Catalog of Federal Domestic Assistance number;

• The program source;

• The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;

• The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;

• A unique identifier of the entity receiving the award; and

• A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity.

Although the Act does not identify specific data elements for subaward reporting, it does require that the data about subawards be disclosed in the same manner as the data for federal agencies’ awards. It also requires OMB to conduct a pilot to determine how best to implement a reporting system under which the entity issuing a subaward is responsible for fulfilling the subaward reporting requirement.

II. Purposes of the Guidance

The proposed guidance following this preamble has three purposes, all of which are related to the implementation of the Transparency Act. Those purposes, which are identified in section 33.100 of the guidance, are to establish:

• A requirement to use the Data Universal Numbering System (DUNS) number as the unique identifier for each entity receiving an award or subaward;

• Requirements for applicant, recipient and subrecipient registration in the Central Contractor Registration (CCR) as a way to maintain a reliable source of standard information about organizations for Transparency Act reporting and other purposes; and

• Requirements for recipient and subrecipient reporting of obligations of federal funds for subawards.

The following paragraphs provide further information about these three requirements.

DUNS number. The interagency task force that OMB established to help implement the Transparency Act selected the DUNS number as the unique identifier that the Act requires to be reported both for the recipient and, if applicable, its parent entity. The proposed guidance following this preamble therefore includes a Government-wide policy under which agencies will require federal financial assistance applicants and recipients, with a few exceptions, to have DUNS numbers. The proposed guidance thereby would expand a current OMB policy requiring use of DUNS numbers in conjunction with grants and cooperative agreements, by broadening the policy to loans and other types of...
III. The Proposed Guidance

The proposed guidance in 2 CFR part 33 is organized into three subparts:

- Subpart A states the purposes of the guidance, as described above in Section II of this preamble. It also specifies the types of federal financial assistance awards and types of recipient and subrecipient entities to which the proposed guidance would apply.
- Subpart B contains five sections that provide authorities and specify responsibilities for agencies. Section 33.200 states requirements for the content of agencies’ program announcements, regulations, or other issuances providing instructions for applicants. Section 33.205 authorizes agencies to disqualify applicants that do not comply with requirements to provide a DUNS er and register in the CCR. Section 33.210 permits agencies to add DUNS number fields to application forms or formats that OMB cleared previously and section 33.215 establishes requirements for agencies’ information systems. Finally, section 33.220 specifies standard wording of an award term for federal financial assistance subject to The Transparency Act. The award term requires recipients and subrecipients to register in the CCR and report on subaward obligations that are subject to the Transparency Act reporting requirements.
- Subpart C contains definitions of terms used in 2 CFR part 33.

IV. Invitation To Comment

We invite comments from the affected public on all aspects of the proposed guidance to agencies, including the proposal to require use of the DUNS number, registration in the CCR, and reporting on subawards. All comments will be considered in developing the final guidance.

List of Subjects in 2 CFR Part 33

Business and industry, Colleges and universities, Cooperative agreements, Farmers, Federal aid programs, Grant programs, Grants administration, Hospitals, Indians, Insurance, International organizations, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements, State and local governments, Subsidies.

Danny Werfel.
Deputy Controller.

Authority and Issuance

For the reasons set forth above, the Office of Management and Budget proposes to amend 2 CFR chapter I by adding part 33 to read as follows:

PART 33—UNIVERSAL IDENTIFIER, CENTRAL CONTRACTOR REGISTRATION, AND SUBAWARD REPORTING

Sec.

Subpart A—General

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Subpart A—General

§ 33.100 Purposes of this part.

This part provides guidance to agencies to establish:

(a) The Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier for federal financial assistance applicants, recipients, and subrecipients.

(b) The Central Contractor Registration (CCR) as the repository for standard information about federal financial assistance applicants, recipients, and subrecipients.

(c) Requirements for recipients’ and subrecipients’ reporting of information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, hereafter referred to as “the Transparency Act”).

§ 33.105 Applicability.

(a) Types of awards. This part applies to an agency’s grants, cooperative
agreements, loans, and other federal financial assistance subject to the Transparency Act, as defined in § 33.325.

(b) Types of recipient and subrecipient entities. (1) General. Through an agency’s implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraph (b)(2) of this section, that—

(i) Apply for or receive agency awards; or

(ii) Receive subawards under those awards.

(2) Exceptions. (i) None of the requirements in this part apply to an individual who applies for or receives federal financial assistance as a natural person (i.e., unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(ii) The requirement in this part to maintain a current registration in the CCR does not apply to:

(A) An agency of the Federal Government that receives an award from another agency.

(B) A foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States, if an agency deems it to be impractical for the entity to register in the CCR.

(C) An entity to which an agency grants an exception based on a need to protect information about the entity from disclosure, to avoid compromising classified information or national security or jeopardizing the personal safety of the entity’s clients.

§ § 33.110 Deviations.

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

Subpart B—Policy

§ § 33.200 Requirements for program announcements, regulations, and application instructions.

(a) Each agency that awards grants, cooperative agreements, loans, or other Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants:

(1) Under which awards may be made that are subject to Transparency Act reporting requirements; and

(2) That either:

(i) Is issued on or after the effective date of this part; or

(ii) Has application or plan due dates or anticipated award dates after October 1, 2008.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 33.105(b)(2) to:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain a current CCR registration at all times during which it has an active federal award or an application or plan under consideration by an agency; and

(3) Provide its DUNS number in each application or plan it submits to the agency.

(c) For purposes of this policy:

(1) The applicant is the entity that meets the agency’s or program’s eligibility criteria and has the legal authority to apply and to receive the award. For example, if a consortium applies for an award to be made to the consortium as the recipient, the consortium must have a DUNS number. If a consortium is eligible to receive funding under an agency program but the agency’s policy is to make the award to a lead entity for the consortium, the DUNS number of the lead entity will be used.

(2) A “program announcement” is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a notice of funding availability, “broad agency announcement,” “research announcement,” “solicitation,” or something else.

§ § 33.205 Effect of noncompliance with requirements in § 33.200.

(a) An agency may not make an award to an entity until the entity has complied with all applicable requirements to provide a valid DUNS number and register in the CCR.

(b) If an entity does not comply with an applicable requirement to provide a DUNS number or register in the CCR, as specified in the program announcement or other instructions, the agency:

(1) May determine that the applicant is not qualified to receive an award; and

(2) May use that determination as a basis for making an award to an alternative applicant.

§ § 33.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 33.200 and 33.205, an agency may add a DUNS number field to application forms or formats previously approved by OMB, without having to obtain further approval to add the field.

§ § 33.215 Requirements for agency information systems.

Each agency that awards or administers grants, cooperative agreements, loans, or other federal financial assistance subject to the Transparency Act must ensure that systems processing information related to the awards, and other systems as appropriate, are able to accept and use the DUNS number as the universal identifier for financial assistance applicants and recipients.

§ § 33.220 Award term.

(a) To accomplish the purposes described in § 33.100, an agency must include the following award term in each award to a non-federal entity of federal financial assistance subject to the Transparency Act:

1. Central Contractor Registration and subaward reporting.

   a. Central Contractor Registration.

   1. Unless you are excepted from this requirement under 2 CFR 33.105(b)(2), you as the recipient must maintain the currency of your information in the Central Contractor Registration (CCR) until you submit the final financial report required under this award or receive the final payment, whichever is later.

   2. If you are authorized to make subawards under this award and it is possible that you will make a subaward to an entity (see definition in paragraph d of this award term) with a total value of $25,000 or more in federal funds over the life of the subaward, you:

   i. Must notify potential subrecipients that no entity may receive funds for a subaward with a total value in that range unless the entity is registered in the CCR, which also requires that the subrecipient have a Data Universal Numbering System (DUNS) number.

   ii. May not make a subaward to an entity with a total value in that range, or obligate additional funds for the subaward, unless the entity is registered in the CCR.

b. Reporting of first-tier subawards.

   1. Applicability. Unless you have a current exception from this requirement under paragraph (e) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), you must report each action that obligates $25,000 or more in federal funds under any subaward to an entity (see definitions in paragraph d of this award term).

   2. Where and when to report. You must report each action described in paragraph b.1 of this award term:

   i. To the http://WWW.USASpending.gov at usaspendingdata@gsa.gov.
§ 33.305 Award.

Award means an award of Federal financial assistance subject to the Transparency Act, as defined in § 33.325.

§ 33.310 Central Contractor Registration (CCR).

Central Contractor Registration (CCR) has the meaning given in paragraph d.1 of the award term in § 33.220.

§ 33.315 Data Universal Numbering System (DUNS) Number.

Data Universal Numbering System (DUNS) Number has the meaning given in paragraph d.2 of the award term in § 33.220.

§ 33.320 Entity.

Entity has the meaning given in paragraph d.3 of the award term in § 33.220.

§ 33.325 Federal financial assistance subject to the Transparency Act.

Federal financial assistance subject to the Transparency Act means assistance that non-federal entities described in § 33.105(b) receive or administer in the form of—

(a) Grants;
(b) Cooperative agreements;
(c) Loans;
(d) Loan guarantees;
(e) Subsidies;
(f) Insurance;
(g) Food commodities;
(h) Direct appropriations; and
(i) Other financial assistance transactions that authorize the non-federal entities’ expenditure of federal funds.

§ 33.330 For-profit organization.

For-profit organization means a non-Federal party organized for profit. It includes, but is not limited to:

(a) An “S corporation” incorporated under Subchapter S of the Internal Revenue Code;
(b) A corporation incorporated under another authority;
(c) A partnership;
(d) A limited liability corporation or limited liability partnership;
(e) A sole proprietorship.

§ 33.335 Foreign public entity.

Foreign public entity means:

(a) A foreign government or foreign governmental entity;
(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);
(c) An entity owned (in whole or in part) or controlled by a foreign government;
(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
§ 33.340 Indian tribe (or “federally recognized Indian tribe”).

Indian tribe (or “federally recognized Indian tribe”) means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, et seq.)) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 33.345 Local government.

Local government means a:
(a) County;
(b) Borough;
(c) Municipality;
(d) City;
(e) Town;
(f) Township;
(g) Parish;
(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;
(j) School district;
(k) Intrastate district;
(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
(m) Any other instrumentality of a local government.

§ 33.350 Nonprofit organization.

Nonprofit organization—
(a) Means any corporation, trust, association, cooperative, or other organization that—
(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
(2) Is not organized primarily for profit; and
(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

(b) Includes nonprofit—
(1) Institutions of higher education;
(2) Hospitals; and
(3) Tribal organizations other than those included in the definition of “Indian tribe.”

§ 33.355 State.

State means—
(a) Any State of the United States;
(b) The District of Columbia;
(c) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;
(d) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and
(e) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

§ 33.360 Subaward.

Subaward has the meaning given in paragraph d.4 of the award term in § 33.220.

§ 33.365 Subrecipient.

Subrecipient has the meaning given in paragraph d.5 of the award term in § 33.220.

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