



**POLICY FLASH 2016-07**

**DATE:** December 31, 2015

**TO:** Procurement Directors/Contracting Officers



**FROM:** Acting Division Chief  
Contract and Financial Assistance Policy Division  
Office of Policy  
Office of Acquisition Management

**SUBJECT:** Reporting and Use of Information Concerning Recipient Integrity and Performance

**SUMMARY:** Beginning on January 1, 2016, DOE COs are required to include the attached FOA and Award Term and Condition for Recipient Integrity and Performance Matters and review FAPIIS as part of a pre-award risk assessment before making a financial assistance award greater than the Simplified Acquisition Threshold.

Additional information is attached, along with FOA and Award T/Cs for immediate use. The FOA T/C should be included in “*Section V-Application Review Information, Paragraph B-Review and Selection Process, Part 2-Selection.*”

The Award T/C should be included as the last T/C of award.

The process to incorporate the T/Cs into STRIPES has been started.

This Flash will be available online at the following website:  
<http://energy.gov/management/listings/policy-flashes>

Questions concerning this policy flash should be directed to Carol Jenkins at 202-287-1827 or at [Carol.Jenkins@hq.doe.gov](mailto:Carol.Jenkins@hq.doe.gov).

Attachment

**Background:**

- ▶ Reporting and Use of Information Concerning Recipient Integrity and Performance - 2 CFR Subtitle A, Chapter I, Part 180, Chapter II Part 200 - Implements section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, as that statute applies to Financial Assistance awards.

On July 22, 2015, the Office of Management and Budget (OMB) released the final rule to implement the Federal Awardee Performance Integrity Information System (FAPIIS) for Federal Financial Assistance awards. FAPIIS is a system designed to ensure Federal awards are issued to reliable and qualified recipients by providing award officials with information pertaining to the past performance of applicants. The final rule is implemented by amending 2 CFR 200 and 2 CFR 180.

- ▶ Effective January 1, 2016, Federal awarding agencies are required to:
  - Review a potential recipient’s information in FAPIIS when conducting pre-award review of risk for awards expected to exceed the simplified acquisition threshold (200.205).
- ▶ Applicability (2 CFR 200.212) – Enter Report in FAPIIS Only if ALL of Following Apply:
  - The only basis for determining “Applicant Not Qualified” is their prior record of executing programs or activities under federal awards or their record of integrity and business ethics; and
  - The total federal share of the anticipated federal award is expected to exceed the Simplified Acquisition Threshold over the Period of Performance.
- ▶ As a result of the final rule, 2 CFR 200 has been amended in multiple places, including:
  - 2 CFR 200.205 has been revised to require Federal agencies to review FAPIIS as part of the pre-award risk assessment before making an award in excess of the simplified acquisition threshold.
  - 2 CFR 200.212 now details the reporting requirements for agencies when a Financial Assistance applicant has been determined to be “not qualified” for a Federal award.
  - 2 CFR 200.213 contains information regarding suspension and debarment which was previously found at 2 CFR 200.212.

- 2 CFR 200.339 and 2 CFR 200.340 provide information regarding an agency's responsibility to the termination of an award to FAPIIS.
- Appendix XII has been added to 2 CFR 200 to explain the award term and condition for recipient reporting on integrity and performance matters.

The new requirements are not applicable to pass-through entities. However, since FAPIIS is publically available, pass-through entities may want to review the system before making a subaward.

Additional Information is below, along with the FOA and Award T/Cs that have been drafted and attached for immediate use.

### **Guidance to Contracting Officers:**

#### **REPORTING AND USE OF INFORMATION CONCERNING RECIPIENT INTEGRITY AND PERFORMANCE**

##### **1. Federal Awardee Performance and Integrity Information System**

(a) Before awarding a Financial Assistance requirement in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at [www.ppirs.gov](http://www.ppirs.gov), then select FAPIIS).

(b) The contracting officer shall consider all the information in FAPIIS and other past performance information (\*see below) when making a responsibility determination. Contracting officers shall use sound judgment in determining the relevance of the information contained in FAPIIS and how it relates to the present acquisition.

(1) Since FAPIIS may contain information on any of the recipient's previous Financial Assistance awards and information covering a five-year period, some of that information may not be relevant to a determination of present responsibility, e.g., a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.; and

(2) Because FAPIIS is a database that provides information about recipients (prime contractors), the contracting officer posts information required to be posted about a subrecipient, such as trafficking in persons violations, to the record of the recipient (prime contractor). The recipient has the opportunity to post in FAPIIS any mitigating factors. The contracting officer shall consider any mitigating factors posted in FAPIIS by the recipient.

(c) If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract or Financial Assistance award; terminations for default or cause; determinations of nonresponsibility because the recipient does not have

a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a Financial Assistance award, the contracting officer shall, unless the recipient has already been debarred or suspended—

(1) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (Recipients debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other recipients); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures, the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

(d) The contracting officer shall document the Financial Assistance file for each Financial Assistance award in excess of the simplified acquisition threshold to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to document that information in FAPIIS.

**\*Past Performance Information:**

Past performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a recipient's actions under previously awarded Financial Assistance requirement. It includes, for example, the recipient's record of—

(1) Conforming to Financial Assistance requirements and to standards of good workmanship;

(2) Forecasting and controlling costs;

(3) Adherence to schedules, including the administrative aspects of performance;

(4) Reasonable and cooperative behavior and commitment to customer satisfaction;

(5) Reporting into databases (reporting requirements in the FOA provisions and in referenced clauses); and

(6) Integrity and business ethics.

**2. Include term and conditions** (FOA and Award Term and Condition for Recipient Integrity and Performance Matters) in FOAs and awards that may include more than \$500,000 over the period of performance (CFR 200.210).

**A. FOA Term and Condition for Recipient Integrity and Performance Matters (DECEMBER 2015) in Section V part B:**

DOE, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

The applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

DOE will consider any written comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.205 Federal awarding agency review of risk posed by applicants.

**B. Award Term and Condition for Recipient Integrity and Performance Matters (DECEMBER 2015)**

**A. Reporting of Matters Related to Recipient Integrity and Performance**

**1. General Reporting Requirement**

If the total value of your currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:

- (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

- (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a

Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active Financial Assistance awards, cooperative agreements, and procurement contracts includes—

- (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
- (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.