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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

2 CFR Part 3254 and 45 CFR Part 1154 RIN 3135-AA21

National Endowment for the Arts Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Office of the General Counsel, National Endowment for the Arts, Arts.
ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) implements Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment, issued on August 31, 2005 [70 FR 51863], by adopting the guidelines in a new part in title 2 of the CFR, the Government-wide title recently established for OMB guidance on grants and agreements, and removing 45 CFR part 1154, the part containing the NEA implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action would make no substantive change in NEA policy or procedures for nonprocurement debarment and suspension.

DATES: *Effective Date:* The rule will become effective March 12, 2007.

FOR FURTHER INFORMATION CONTACT: National Endowment for the Arts, ATTN: Federal Register, 1100 Pennsylvania Avenue, NW., Room 518, Washington, DC 20506; or Laura Nelson, (202) 682-5595.

SUPPLEMENTARY INFORMATION: This final rule implements the OMB guidance and does not make any changes in current policies and procedures.

Executive Order 12866

This rule is not significant because the replacement of the common rule

with OMB guidance and a brief NEA adopting regulation does not make any changes in current policies and procedures.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 2 CFR Part 3254

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 20 U.S.C. 959(a)(1), NEA amends title 2, subtitle B, and title 45, chapter 1154, of the Code of Federal Regulations as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter 32 to Subtitle B to read as follows:

CHAPTER 32—NATIONAL ENDOWMENT FOR THE ARTS

PART 3254—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3254.10 What does this part do?

3254.20 Does this part apply to me?

3254.30 What policies and procedures must I follow?

Subpart A—General

3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—I [Reserved]

Authority: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 3254.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Arts (NEA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

§ 3254.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in a NEA suspension or debarment action.

(c) NEA debarment or suspension official;

(d) NEA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 3254.30 What policies and procedures must I follow?

The NEA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3254.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

The NEA Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see options lower tier coverage in the figure in the Appendix to 2 CFR part 180), NEA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions
§ 3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E—I [Reserved]

Title 45 Public Welfare—Chapter XI—National Endowment for the Arts

PART 1154—[REMOVED]

■ 2. Under authority Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235) part 1154 is removed.

Dated: January 31, 2007.

Karen Elias,

Acting General Counsel, National Endowment for the Arts.

[FR Doc. 07–576 Filed 2–8–07; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

[3206–AL05]

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards

AGENCY: Office of Personnel Management.

ACTION: Final rule, Technical Amendment.

SUMMARY: The Office of Personnel Management (OPM) is making a technical amendment to the final regulations concerning the Combined Federal Campaign (CFC). This technical amendment corrects the final rule issued on November 20, 2006 by re-inserting text that was erroneously removed.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert by telephone at (202) 606–2564; by FAX at (202) 606–5056; or by e-mail at cfc@opm.gov.

DATES: This technical amendment is effective on February 9, 2007.

SUPPLEMENTARY INFORMATION: In the final regulations issued on November 20, 2006, OPM erroneously removed regulatory text in 5 CFR 950.203(a)(1) that had required a charitable organization applying to participate in the CFC to provide, in addition to its certification, “documentation describing the health and human welfare benefits provided by the organization within the previous year.” Although OPM has changed the manner in which it collects this documentation (as of 2007, it is included on the “Statement of Services” Attachment A to the application whereas in previous years it was a separate attachment to the application), OPM did not intend to remove the regulatory provision. As stated in the Supplementary Information to both the Proposed Rule, 71 FR 37003 (June 29, 2006) and the Final Rule, “no changes were proposed to this standard and it remains the same as the existing regulation.” 71 FR 67276, 67277 (November 20, 2006). The denotation “(a) * * *” regarding regulatory changes under section 950.203 Public Accountability Standards, similarly indicates OPM’s intention to retain the provision at 5 CFR 950.203(a)(1) as it had previously existed. OPM believes that this documentation is an important requirement to ensure that only organizations that are currently providing human health and welfare services are admitted to participate in the CFC. As such, OPM is re-inserting this provision into the regulations via this technical amendment.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. This technical amendment will not cause significant additional burden.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations and Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,
Director, U.S. Office of Personnel Management.

■ Accordingly, OPM amends 5 CFR part 950 as follows: