



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

November 5, 2007

M-08-03

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Clay Johnson
Deputy Director for Management

SUBJECT: Implementation of the Trafficking Victims Protection Act; Grants and Cooperative Agreements

The memorandum announces the establishment, by OMB's Office of Federal Financial Management (OFFM), of a government-wide award term for all agencies to include in their grants and cooperative agreements, as part of the Executive Branch's implementation of the Trafficking Victims Protection Act of 2000, as amended (TVPA).

Section 106(g) of the TVPA, as amended, directs on a government-wide basis that:

"any grant, contract, or cooperative agreement provided or entered into by a Federal department or agency under which funds are to be provided to a private entity, in whole or in part, shall include a condition that authorizes the department or agency to terminate the grant, contract, or cooperative agreement, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement." (22 U.S.C. § 7104(g))

Moreover, the President has directed, in Executive Order 13333, that agencies implement Section 106(g). In particular, the President stated that "[e]ach affected executive branch department or agency shall implement, within that department or agency, the requirements set out in section 106(g) of the Act with respect to grants and cooperative agreements." (69 FR 13455; March 23, 2004)

To help ensure consistent and effective implementation of Section 106(g) by all agencies, OFFM has established, on an interim final basis, a standard award term (and related guidance) for agencies to use in their grants and cooperative agreements. Attached are the award term and guidance, which were developed by an interagency workgroup under the Grants Policy Committee of the Chief Financial Officers Council (and will be published in the Federal Register). As they are being issued on an interim final basis, agencies should begin to implement them for their grants and cooperative agreements, while OMB receives and considers public comments and determines whether any revisions would be appropriate for the final award term and guidance.

Finally, with respect to procurements, it should be noted that the Federal Acquisition Regulations (FAR) state the policy (Section 22.17) and provide a standard contract clause (Section 52.222-50) for implementing Section 106(g).

For additional questions concerning the new award term and guidance, please contact Marguerite Pridgen in OMB's Office of Federal Financial Management at mpridgen@omb.eop.gov or 202-395-7844.

Attachment

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 175

RIN

Trafficking in Persons: Grants and Cooperative Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Interim final guidance.

SUMMARY: The Office of Federal Financial Management (OFFM) is establishing a government-wide award term for agencies to include in grants and cooperative agreements as part of their implementation of paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). In each award under which funding is provided to a private entity, the statute requires the awarding agency to include a condition authorizing termination of the award if the recipient or a subrecipient engages in certain activities related to trafficking in persons.

DATES: The effective date for this interim final guidance is *[insert date that is 30 days after date of publication in the FEDERAL REGISTER]*. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by *[insert date that is 60 days after date of publication in the FEDERAL REGISTER]*.

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: mpridgen@omb.eop.gov. Please include “OMB Trafficking in Persons 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 or by mail at 725 17th St, NW Room 6025, Washington, DC 20503.

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: mpridgen@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

In the Trafficking Victims Protection Reauthorization Act of 2003 (P.L. No. 108-193, § 3), Congress amended the Trafficking Victims Protection Act of 2000 (TVPA; P.L. No. 106-386, Div. A). One of the amendments was the addition of a new paragraph (g) to section 106 of the TVPA (Section 106 is codified at 22 U.S.C. § 7104). Paragraph (g) provides that:

“any grant, contract, or cooperative agreement provided or entered into by a Federal department or agency under which funds are to be provided to a private entity, in whole

or in part, shall include a condition that authorizes the department or agency to terminate the grant, contract, or cooperative agreement, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.”

As originally added in 2003, subsection (g) applied to “funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs).” Following the enactment of the 2003 Act, the President issued Executive Order (EO) No. 13333 (69 FR 13455; March 23, 2004), which implemented this new subsection 106(g) by amending EO No. 13257. One of the amendments to EO 13257 was the addition of a new Section 5 (“Enhanced Prevention of Trafficking in Persons”), which provides in part that “[e]ach affected executive branch department or agency shall implement, within that department or agency, the requirements set out in section 106(g) of the Act with respect to grants and cooperative agreements.”

Section 106(g) was subsequently amended in the Trafficking Victims Protection Reauthorization Act of 2005 (P.L. No. 109-164). Section 201(b) of this Act repealed the language that had previously stated that subsection (g) applied with respect to “category 150” funding. As a result, section 106(g) now applies to all Federal grants and cooperative agreements under which funds would be provided to private entities.

In implementing Section 106(g), as amended, it is important to ensure effective government-wide implementation of this national policy. To that end, we are issuing, on an interim final basis, a Government-wide standard award term (and related guidance) on

trafficking in persons for agencies to include in their grants and cooperative agreements. This award term was developed by an interagency workgroup under the Grants Policy Committee of the Chief Financial Officers Council.

II. NEXT STEPS

We will consider all comments received on the interim final version of the OMB guidance as we develop the final guidance. Federal agencies that award grants or cooperative agreements will implement the guidance through appropriate regulations and award terms.

List of Subjects in 2 CFR Part 175

Administrative practice and procedure, Colleges and universities, Cooperative agreements, Grant programs, Grants administration, Hospitals, Indians-tribal government, Industry, Nonprofit organizations, State and local governments, Trafficking in persons

Dated:

Danny Werfel,

Acting Controller.

For the reasons set forth above, the Office of Management and Budget proposes to amend 2 CFR chapter I by adding a part 175 to read as follows:

PART 175-AWARD TERM FOR TRAFFICKING IN PERSONS

Sec.

- 175.05 Purpose of this part.
- 175.10 Statutory requirement.
- 175.15 Award term.
- 175.20 Referral.
- 175.25 Definitions.

Authority: 22 U.S.C. 7104(g); 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.

PART 175- AWARD TERM FOR TRAFFICKING IN PERSONS

§175.05 Purpose of this part.

This part establishes a Governmentwide award term for grants and cooperative agreements to implement the requirement in paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).

§175.10 Statutory requirement.

In each agency award (i.e., grant or cooperative agreement) under which funding is provided to a private entity, section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a subrecipient--

- (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;

(b) Procures a commercial sex act during the period of time that the award is in effect; or

(c) Uses forced labor in the performance of the award or subawards under the award.

§175.15 Award term.

(a) To implement the trafficking in persons requirement in section 106(g) of the TVPA, as amended, a Federal awarding agency must include the award term in paragraph (b) of this section in--

(1) A grant or cooperative agreement to a private entity, as defined in §175.25(d); and

(2) A grant or cooperative agreement to a State, local government, Indian tribe or foreign public entity, if funding could be provided under the award to a private entity as a subrecipient.

(b) The award term that an agency must include, as described in paragraph (a) of this section, is:

I. Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not--

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity --

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either--

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *[agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., "2 CFR part XX")]*.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *[agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., "2 CFR part XX")]*.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. **Definitions.** For purposes of this award term:

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

(c) An agency may use different letters and numbers to designate the paragraphs of the award term in paragraph (b) of this section, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

§175.20 Referral.

An agency official should inform the agency's suspending or debarring official if he or she terminates an award based on a violation of a prohibition contained in the award term under §175.15.

§175.25 Definitions.

Terms used in this part are defined as follows:

(a) Foreign public entity means:

- (1) A foreign government or foreign governmental entity;
- (2) 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);
- (3) An entity owned (in whole or in part) or controlled by a foreign government; and
- (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) 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.

(c) Local government means a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the

United States Housing Act of 1937;

- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit

corporation under State law; and

- (13) Any other instrumentality of a local government.

(d) Private entity

(1) This term means any entity other than a State, local government, Indian tribe, or foreign public entity.

(2) This term includes:

(i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe in paragraph (b) of this section.

(ii) A for-profit organization.

(e) State, consistent with the definition in section 103 of the TVPA, as amended (22 U.S.C. 7102), means:

(1) Any State of the United States;

(2) The District of Columbia;

(3) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(4) The Commonwealths of Puerto Rico and the Northern Mariana Islands;

and

(5) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States .