

FINDINGS AND DETERMINATION for CLASS DEVIATION to 2 CFR 910.501 AUDIT REQUIREMENTS FOR FOR-PROFIT ORGANIZATIONS

Findings:

The Department of Energy (DOE) promulgates regulations for Federal financial assistance awards at 2 Code of Federal Regulations (CFR) 910, that codified the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

DOE makes awards to institutions of higher education, non-profit organizations, state, local and tribal governments, and for-profit organizations.

The Single Audit Act requires entities other than for-profit organizations to obtain an annual audit conducted in accordance with 2 CFR 200 Subpart F. The audit is conducted in accordance with the Generally Accepted Government Auditing Standards, and depending on the type of audit may include reviewing the schedule of expenditures of Federal awards, financial statements, internal controls, and compliance with the awards terms and Federal statutes and regulations, including an assessment of whether the recipient is in compliance with the cost share arrangement set forth in the terms of the award.

As the Single Audit Act does not cover for-profit organizations, DOE determined the need to apply the principles of the Single Audit Act to for-profit organizations. See 2 CFR 910 Subpart F.

Recent updates to 2 CFR 200 Subpart F to raise the threshold for a single audit from \$750,000 of expenditures in federal funds to \$1,000,000 requires DOE to update the audit threshold for for-profit organizations to provide this relief in audit requirements and to maintain consistency in requirements and guidance. This update is effective on October 1, 2024.

The update for 2 CFR 910 Subpart F to increase the threshold requires a rulemaking with notice to and the opportunity for comment from interested parties. DOE is unable to complete the rulemaking by this date. A class deviation is required to increase the threshold prior to the completion of the rulemaking.

Determination:

In order to provide the relief to for-profit organizations and maintain consistency in DOE's audit requirements for all financial assistance recipients, it is determined that a class deviation to 2 CFR 910.501 is in the best interest of DOE and necessary to achieve program objectives.

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Attachment: Deviation text

Deviation Text to 2 CFR 910.501

§ 910.501 Audit requirements.

(a) Audit required. A for-profit entity that expends **\$1,000,000** or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in accordance with the provisions of this Part.

(b) Compliance audit.

(1) If a for-profit entity has one or more DOE awards with expenditures of **\$1,000,000** or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with **\$1,000,000** or more in expenditures. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of **\$1,000,000** or more during the for-profit entity's fiscal year, but does not have any single award with expenditures of **\$1,000,000** or more; the entity must determine whether any or all of the awards have common compliance requirements (i.e., are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit;

(3) If a for-profit entity receives one or more awards from DOE with a sum total of expenditures less than **\$1,000,000**, no compliance audit is required;

(4) If the for-profit entity is a sub-recipient, 2 CFR 200.501(h) requires that the pass-through entity establish appropriate monitoring and controls to ensure the sub-recipient complies with award requirements. These compliance audits must be conducted in accordance with 2 CFR 200.514 Scope of audit

(c) Program-specific audit election. Not applicable.

(d) Exemption when Federal awards expended are less than **\$1,000,000**. A for-profit entity that expends less than **\$1,000,000** during the for-profit's fiscal year in DOE awards is exempt from DOE audit requirements for that year, except as noted in § 910.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. The provisions of 2 CFR 200.331, Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients to DOE Federal award requirements. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 2 CFR 200.332, Requirements for pass-through entities.

(Note: bolded text changed from \$750,000 to \$1,000,000.)