

STATEMENT OF DETERMINATION

1. In accordance with 5 CFR 1320.13, the senior official or designee of the Department of Defense has determined that this collection of information is needed prior to the expiration of the time periods under 5 CFR 1320, and is essential to the mission of the agency. The agency cannot reasonably comply with the normal clearance procedures under Part 1320 since such compliance would delay compliance with the statutory requirements.
2. The Office of the Assistant Secretary of Defense for Research and Engineering is submitting the subject requirement for emergency review and approval. This emergency submission is necessary and appropriate to ensure that the Department exercises due diligence to preclude making grant and cooperative agreement awards to entities that are made ineligible by the following provisions of the Consolidated Appropriation Act, 2012 (Public Law 112-74): Division A, sections 8124 and 8125; Division B, sections 504 and 505; and Division H, section 514, as well as anticipated follow-on provisions in FY 2013 appropriations. The FY 2012 provisions of Division A, section 8124, and Division B, section 505, prohibit the Department's use of the appropriations made available by Divisions A and B to enter into a grant or cooperative agreement with a corporation if the agency is aware that the corporation has an outstanding tax liability, unless suspension or debarment of the entity was considered and determined to be unnecessary to protect the interests of the Government. The other three provisions prohibit use of the appropriations made available by Divisions A, B, and H to enter into a grant or cooperative agreement with a corporation if the agency is aware that the corporation was convicted of a felony criminal violation under Federal law within the past 24 months, unless suspension or debarment was considered and determined to be unnecessary. The provision in Division B extends the coverage to felony convictions of officers and agents of the corporation and the provision in Division H extends it to felony convictions under State law. Because the common meaning of "corporation" includes incorporated universities and affiliated research institutes and other nonprofit organizations with which DoD does business through grants and cooperative agreements, the provisions are relevant to many DoD programs. DoD and other agencies subject to similar appropriations provisions, in consultation with OMB, judged that exercise of due diligence called for agencies to require applicants for grants and cooperative agreements to submit representations concerning tax delinquencies and felony convictions with their applications. Agencies otherwise lack a source of information to have awareness of those matters.
3. The information that is requested is the minimum necessary to exercise due diligence to be aware of felony convictions and tax delinquencies and thereby be able to comply with the intent of the provisions of P. L. 112-74 cited in the preceding paragraph, as well as the currently anticipated provisions in FY 2013 appropriations.