

§ 74.53

monitored through other forms contained in this section; (B) If, in HHS' opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or, (C) When the electronic payment mechanisms provide adequate data.

(b) When the HHS awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, the HHS awarding agency will issue instructions to require recipients to submit that information under the "Remarks" section of the reports.

(2) When HHS determines that a recipient's accounting system does not meet the standards in § 74.21, additional pertinent information to further monitor awards may be obtained, without regard to § 74.4, upon written notice to the recipient until such time as the system is brought up to standard. In obtaining this information, the HHS awarding agencies comply with report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public."

(3) The HHS awarding agency may accept the identical information from a recipient in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(4) The HHS awarding agency may provide computer or electronic outputs to recipients when such action expedites or contributes to the accuracy of reporting.

§ 74.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

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(1) If any litigation, claim, financial management review, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the HHS awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in § 74.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the HHS awarding agency.

(d) The HHS awarding agency will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) HHS awarding agencies, the HHS Inspector General, the U.S. Comptroller General, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, the HHS awarding agency will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the HHS awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to

the Freedom of Information Act, 5 U.S.C. 552, if the records had belonged to the HHS awarding agency.

(g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If the recipient submits to the Federal Government or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If the recipient is not required to submit to the Federal Government or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 74.60 Purpose of termination and enforcement.

Sections 74.61 and 74.62 set forth uniform suspension, termination and enforcement procedures.

§ 74.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a) (1), (2), or (3) of this section applies.

(1) By the HHS awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the HHS awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the HHS awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 74.62 Enforcement.

(a) If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award, the HHS awarding agency may, in addition to imposing any of the special conditions outlined in § 74.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the HHS awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take any other remedies that may be legally available.

(b) In taking an enforcement action, the HHS awarding agency will provide the recipient or subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action. (See also 45 CFR parts 16 and 95.)

(c) Costs to a recipient resulting from obligations incurred by the recipient