

## Department of Justice

## § 70.62

Department can demonstrate that such records must 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 Department.

(g) Indirect cost rate proposals, cost allocation plans, etc. 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 submitted for negotiation.* If the recipient submits to the Department or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Department or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the three 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.

[Order No. 1980-95, 60 FR 38242, July 26, 1995; Order No. 1998-95, 60 FR 57932, Nov. 24, 1995]

### TERMINATION AND ENFORCEMENT

#### § 70.60 Purpose of termination and enforcement.

Sections 70.61 and 70.62 set forth uniform suspension, termination and enforcement procedures.

#### § 70.61 Termination.

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

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

(2) By the Department with the consent of the recipient, in which case the

two parties must 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 Department 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 Department determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 70.71(a), including those for property management as applicable, must be considered in the termination of the award, and provision must be made for continuing responsibilities of the recipient after termination, as appropriate.

#### § 70.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Department will, in addition to imposing any of the special conditions outlined in § 70.14, 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 Department.

(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 other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the Department will provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute

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or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Exec. Order No. 12549 and 12689 and the Department implementing regulations (see § 70.13).

[Order No. 1980–95, 60 FR 38242, July 26, 1995;  
Order No. 1998–95, 60 FR 57932, Nov. 24, 1995]

### Subpart D—After-the-Award Requirements

#### § 70.70 Purpose.

Sections 70.71 through 70.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

#### § 70.71 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Department may approve extensions when requested in writing by the recipient.

(b) Unless the Department authorizes an extension, a recipient must liq-

uidate all obligations incurred under the award not later than ninety calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Department will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient must promptly refund any balances of unobligated cash that the Department has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Department will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 70.31 through 70.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

#### § 70.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 70.26.

(4) Property management requirements in §§ 70.31 through 70.37.

(5) Records retention as required in § 70.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Department and the recipient, provided the