

§ 74.1

- 74.82 Program income.
74.83 Effect on intangible property.

Subpart F—Disputes

- 74.90 Final decisions in disputes.
74.91 Alternative dispute resolution.
APPENDIX A TO PART 74—CONTRACT PROVISIONS
APPENDIXES B-D TO PART 74 [RESERVED]
APPENDIX E TO PART 74—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH HOSPITALS
APPENDIXES F-H TO PART 74 [RESERVED]

AUTHORITY: 5 U.S.C. 301.

Subpart A—General

SOURCE: 59 FR 43760, Aug. 25, 1994, unless otherwise noted.

§ 74.1 Purpose and applicability.

(a) Unless inconsistent with statutory requirements, this part establishes uniform administrative requirements governing:

(1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and only to commercial organizations in instances other than those involving procedures to make data available under the Freedom of Information Act provision set forth in § 74.36(d)(1).

(2) Subgrants or other subawards awarded by recipients of HHS grants and agreements to institutions of higher education, hospitals, other nonprofit organizations and commercial organizations, including subgrants or other subawards awarded under HHS grants and agreements administered by State, local and Indian Tribal governments; and

(b) Nonprofit organizations that implement HHS programs for the States are also subject to state requirements.

(c) HHS shall not impose additional or inconsistent requirements except as provided in §§ 74.4 and 74.14, or unless specifically required by Federal statute or executive order.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, 11747, Mar. 22, 1996; 65 FR 14418, Mar. 16, 2000; 68 FR 52844, Sept. 8, 2003]

45 CFR Subtitle A (10-1-05 Edition)

§ 74.2 Definitions.

Accrued expenditures mean the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of: (1) Earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under Federal procurement laws and regulations.

Cash contributions mean the recipient's cash outlay, including the outlay

of money contributed to the recipient by third parties.

Closeout means the process by which the HHS awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HHS.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Current accounting period means, with respect to § 74.27(b), the period of time the recipient chooses for purposes of financial statements and audits.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which HHS awarding agency sponsorship ends.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs mean those charges to an award that the HHS awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Discretionary award means an award made by an HHS awarding agency in keeping with specific statutory authority which enables the agency to exercise judgment ("discretion") in selecting the applicant/recipient organization through a competitive award process.

Equipment means tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any HHS awarding agen-

cy that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the HHS awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6306, for property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose principal purpose is conducting scientific research.

Federal funds authorized mean the total amount of Federal funds obligated by the HHS awarding agency for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by the HHS awarding agency's implementing instructions or authorized by the terms and conditions of the award.

Federal share of real property, equipment, or supplies means that percentage of the property's or supplies' acquisition costs and any improvement expenditures paid with Federal funds. This will be the same percentage as the Federal share of the total costs under the award for the funding period in which the property was acquired (excluding the value of third party in-kind contributions).

Federally recognized Indian Tribal government means the governing body of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Government means a State or local government or a federally recognized Indian tribal government.

§ 74.2

HHS means the U.S. Department of Health and Human Services.

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards.

Intangible property and debt instruments mean, but are not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Local government means a local unit of government, including specifically a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate entity, or any agency or instrumentality of local government.

Obligations mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

OGAM means the Office of Grants and Acquisition Management, which is an organizational component within the Office of the Secretary, HHS, and reports to the Assistant Secretary for Management and Budget.

OMB means the U.S. Office of Management and Budget.

Outlays or expenditures mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property re-

45 CFR Subtitle A (10–1–05 Edition)

ceived, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized HHS official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 74.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles (see § 74.27), incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which HHS awarding agency sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from an HHS awarding agency to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, commercial organizations, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the HHS awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers. For entitlement programs listed at 45 CFR 92.4(a)(3), (a)(7), and (a)(8) "recipient" means the government to which an HHS awarding agency awards funds and which is accountable for the use of the funds provided. The recipient in this case is the entire legal entity even if only a particular component of the entity is designated in the award document.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, hospitals, other nonprofit institutions, and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000).

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the HHS awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by the HHS awarding agency that temporarily withdraws the agency's financial assistance sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award.

Suspension of an award is a separate action from suspension under HHS regulations (45 CFR part 76) implementing E.O.s 12549 and 12689, "Debarment and Suspension."

§ 74.3

Termination means the cancellation of HHS awarding agency sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. For the entitlement programs listed at 45 CFR 92.4 (a)(3), (a)(7), and (a)(8), “termination” shall have that meaning assigned at 45 CFR 92.3.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, mean the amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the HHS awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient’s approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, Mar. 22, 1996; 62 FR 41878, Aug. 4, 1997]

§ 74.3 Effect on other issuances.

This part supersedes all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part, except to the extent they are required by Federal

45 CFR Subtitle A (10–1–05 Edition)

statute, or authorized in accordance with the deviations provision in § 74.4.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, Mar. 22, 1996]

§ 74.4 Deviations.

(a) After consultation with OMB, the HHS OGAM may grant exceptions to HHS awarding agencies for classes of awards or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. HHS awarding agencies may apply more restrictive requirements to a class of awards or recipients when approved by the OGAM, after consultation with the OMB. HHS awarding agencies may apply less restrictive requirements without approval by the OGAM when making small awards except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by HHS awarding agencies without seeking prior approval from the OGAM. OGAM will maintain a record of all requests for exceptions from the provisions of this part that have been approved for classes of awards or recipients.

(b) As a matter of Departmental policy, requests for individual case deviations will be considered favorably by HHS and its awarding agencies whenever the deviation will facilitate comprehensive or integrated service delivery, or multiple-source consolidated awards, unless the deviation would impair the integrity of the program.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, Mar. 22, 1996]

§ 74.5 Subawards.

(a) Unless inconsistent with statutory requirements, this part (except for § 74.12 and the forms prescribed in § 74.22) shall apply to—

(1) Except for subawards under block grants (45 CFR part 96), all subawards received by institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations from any recipient of an HHS award, including any subawards received from States, local governments,