

## § 74.70

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 during a suspension or after termination of an award are not allowable unless the HHS awarding agency 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:

(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; and

(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) The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the HHS implementing

## 45 CFR Subtitle A (10-1-06 Edition)

regulations at § 74.13 of this part and 45 CFR part 76.

[59 FR 43760, Aug. 25, 1994, as amended at 62FR 38218, July 17, 1997]

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

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

#### § 74.70 Purpose.

Sections 74.71 through 74.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

#### § 74.71 Closeout procedures.

(a) Recipients shall 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 HHS awarding agency may approve extensions when requested by the recipient.

(b) Unless the HHS awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 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) HHS will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that HHS has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. 45 CFR part 30 governs unreturned amounts that become delinquent debts.

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

(f) The recipient shall account for any real and personal property acquired with HHS funds or received from the Federal Government in accordance with §§ 74.31 through 74.37.

## Department of Health and Human Services

## § 74.90

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

### § 74.72 Subsequent adjustments and continuing responsibilities.

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

(1) The right of the HHS awarding agency 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 § 74.26.

(4) Property management requirements in §§ 74.31 through 74.37.

(5) Records retention requirements in § 74.53.

(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 HHS awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 74.72(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

### § 74.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the HHS awarding agency may reduce the debt by paragraph (a) (1), (2), or (3) of this section:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, HHS awarding agencies will charge interest on an overdue debt in accordance with 4 CFR ch. II, "Federal

Claims Collection Standards." (See 45 CFR part 30.)

## Subpart E—Special Provisions for Awards to Commercial Organizations

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

### § 74.80 Scope of subpart.

This subpart contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

### § 74.81 Prohibition against profit.

Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11747, Mar. 22, 1996]

### § 74.82 Program income.

The additional costs alternative described in § 74.24(b)(1) may not be applied to program income earned by a commercial organization except in the SBIR and STTR programs.

### § 74.83 Effect on intangible property.

Data sharing (FOIA) requirements as set forth in § 74.36(d)(1) do not apply to commercial organizations.

[65 FR 14418, Mar. 16, 2000]

## Subpart F—Disputes

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

### § 74.90 Final decisions in disputes.

(a) HHS attempts to promptly issue final decisions in disputes and in other matters affecting the interests of recipients. However, final decisions adverse to the recipient are not issued until it is clear that the matter cannot