

Department of Health and Human Services

§ 77.5

§ 77.2 Scope.

The regulations in this part apply to all recipient organizations under any program administered by the Department through which the organization receives Federal funds under a letter of credit.

§ 77.3 Conditions that may give rise to remedial actions.

If the Department determines that any of the following conditions is present in a recipient organization's administration of a letter of credit, it may take remedial actions against the organization:

(a) A recipient organization draws Federal funds through its letter of credit in excess of the aggregate grant award or contract authority currently available to it.

(b) A recipient organization draws Federal funds for a particular program in excess of currently available grant award or contract authority for that program, even though the organization may not have exceeded its aggregate grant award or contract authority.

(c) A recipient organization fails to file timely all reports and other data required by the Department in connection with its grant awards, contracts, or letter of credit.

(d) A recipient organization accumulates, through its letter of credit or otherwise, excess amounts of Federal funds relative to its actual and immediate disbursement requirements.

(e) A recipient organization's cash management system fails to comply with generally accepted accounting principles or Departmental regulations or demonstrates irregularities, misrepresentations, fraud, or abuse in its operation.

§ 77.4 Remedial actions.

If, after the conclusion of the procedures set forth in § 77.5 or § 77.6 the Department finds that one or more of the conditions set forth in § 77.3 is or has been present, the Department may take the following remedial actions against a recipient organization's use of its letter of credit:

(a) The Department may place special limits, restrictions, or controls upon the recipient organization's use of its letter of credit.

(b) The Department may require more frequent or more detailed financial reporting from the recipient organization.

(c) The Department may suspend, reduce, or terminate the recipient organization's use of its letter of credit.

§ 77.5 Remedial action procedures.

Except as provided in § 77.6, the Department will use the following procedures whenever it seeks the remedial action specified in § 77.4.

(a) *Notice.* Prior to taking remedial action, the Department will provide the recipient organization written notice of its intended action setting forth both the legal and factual reasons therefor. Notice may be provided by certified or express mail, TWX, telegram, delivery, or similar means.

(b) *Opportunity to respond.* (1) The recipient organization has 30 days after receipt of the notice in which to submit to the Department a written statement setting forth any legal and factual reasons why it believes the proposed remedial action would be inappropriate. If no response is received by the Department within the 30-day period, the Department may make the proposed remedial action effective immediately. If a response opposing the taking of remedial action is received from the recipient organization within the 30-day period, no remedial action will be taken until a final decision has been reached under paragraph (c) of this section. (2) The Department may prepare a written reply to the recipient organization's response. Any such reply will be forwarded to the deciding official together with the notice sent to the recipient organization and the organization's response, and a copy of the reply will be served on the recipient organization.

(c) *Departmental decision.* The Department's decision to take remedial action under this part will be made by an official of the Department who had no involvement with the initial determination to seek remedial action. The deciding official may affirm, reverse, or modify the initial determination. In making the decision, the official will consider only the notice provided by the Department, the recipient organization's statement, the Department's

§ 77.6

reply, together with any other documents attached to them, and statements at any informal conference held pursuant to paragraph (d) of this section. The official's decision will be provided to the recipient organization in writing and will constitute the Department's final administrative action on the matter.

(d) *Informal conference.* If, in the judgment of the official designated to make a final decision, it would materially enhance his ability to resolve the matters in dispute, he may convene an informal conference to question or hear an oral presentation by the parties. If an informal conference is convened it will be transcribed.

(e) *Effect of decision.* The decision in a proceeding under this section affects only the recipient organization's obligations related to its letter of credit and does not determine the organization's ultimate liability with respect to improperly spent funds or other misconduct.

§ 77.6 Emergency procedures.

(a) Should the Department determine that it cannot adequately protect assets of the Federal government available to a recipient organization under its letter of credit without taking remedial action prior to the procedures specified in § 77.5, it may immediately take remedial action subject to the subsequent completion of those procedures.

(b) Where the Department has taken remedial action as described in paragraph (a) of this section, it will notify the recipient organization orally of the remedial action within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in § 77.5(a).

(c) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in § 77.5(b)(1).

(d) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

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

PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.

78.1 Applicability.

78.2 Definitions.

78.3 Benefits not denied to rehabilitated offenders.

AUTHORITY: Section 5301 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

SOURCE: 56 FR 29592, June 28, 1991, unless otherwise noted.

§ 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.

§ 78.2 Definitions.

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to and including the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Administration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program* means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.