

§ 82.301

§ 82.301 [Reserved]

Subpart D—Responsibilities of HHS Awarding Officials

§ 82.400 What are my responsibilities as a(n) HHS awarding official?

As a(n) HHS awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

- (a) Subpart B of this part, if the recipient is not an individual; or
- (b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 82.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the HHS Official or designee determines, in writing, that—

- (a) The recipient has violated the requirements of subpart B of this part; or
- (b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 82.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the HHS Official or designee determines, in writing, that—

- (a) The recipient has violated the requirements of subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 82.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 82.500 or § 82.505, the HHS may take one or more of the following actions—

45 CFR Subtitle A (10–1–06 Edition)

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 45 CFR Part 76, for a period not to exceed five years.

[68 FR 66557, 66633, Nov. 26, 2003]

§ 82.515 Are there any exceptions to those actions?

The the Secretary of HHS may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary of HHS determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 82.605 Award.

Award means an award of financial assistance by the HHS or other Federal agency directly to a recipient.

(a) The term award includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule 45 CFR Part 92 that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

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§ 82.610 Controlled substance.

Controlled substance means a controlled substance in schedules I

through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 82.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 82.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 82.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 82.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 82.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 82.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing,

possession, or use of a controlled substance.

§ 82.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 82.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 82.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 82.655 Individual.

Individual means a natural person.