

§ 75.362

§ 75.362 Requests for transfer or records.

The HHS awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 75.363 Methods for collection, transmission and storage of information.

In accordance with the May 2013 Executive Order on Making Open and Machine readable the New Default for Government Information, the HHS awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper.

[81 FR 3017, Jan. 20, 2016]

§ 75.364 Access to records.

(a) *Records of non-Federal entities.* The HHS awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the HHS awarding agency. Any such access, other than under a court

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order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the HHS awarding agency or delegate.

(c) *Expiration of right of access.* The rights of access in this section are not limited to the required retention period but last as long as the records are retained. HHS awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 75.365 Restrictions on public access to records.

Consistent with § 75.322, HHS awarding agencies may require recipients to permit public access to manuscripts, publications, and data produced under an award. However, no HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award identified in §§ 75.361 through 75.364, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records identified in §§ 75.361 through 75.364. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

[81 FR 89395, Dec. 12, 2016]

§§ 75.366–75.370 [Reserved]

REMEDIES FOR NONCOMPLIANCE

§ 75.371 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency

or pass-through entity may impose additional conditions, as described in § 75.207. If the HHS awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the HHS awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the HHS awarding agency or pass-through entity.

(b) 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.

(c) Wholly or partly suspend (suspension of award activities) or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HHS awarding agency regulations at 2 CFR part 376 (or in the case of a pass-through entity, recommend such a proceeding be initiated by a HHS awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 75.372 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the HHS awarding agency or pass-through entity, if the non-Federal entity fails to comply with the terms and conditions of the award;

(2) By the HHS awarding agency or pass-through entity for cause;

(3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, 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; or

(4) By the non-Federal entity upon sending to the HHS awarding agency or pass-through entity 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 HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When an HHS awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the HHS awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under this paragraph (b) is not to be reported to the designated integrity and performance system until after the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 75.374; or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the HHS awarding agency that it intends to appeal the HHS awarding agency's decision to terminate.

(2) If an HHS awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of the information is erroneous, the HHS awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the HHS awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way;

(3) HHS awarding agencies shall not post any information that will be made publicly available in the non-public segment of the designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within