

(b) HHS will follow all applicable Supreme Court decisions in administering its award programs.

(c) In the statutes listed in paragraphs (c)(1) through (13) of this section that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. This provision is interpretive and does not impose any substantive obligations on entities outside the Department. This paragraph (c) interprets the following HHS authorities that prohibit discrimination on the basis of sex:

(1) 8 U.S.C. 1522. Authorization for programs for domestic resettlement of and assistance to refugees.

(2) 42 U.S.C. 290cc-33. Projects for Assistance in Transition from Homelessness.

(3) 42 U.S.C. 290ff-1. Children with Serious Emotional Disturbances.

(4) 42 U.S.C. 295m. Title VII Health Workforce Programs.

(5) 42 U.S.C. 296g. Nursing Workforce Development.

(6) 42 U.S.C. 300w-7. Preventive Health Services Block Grant.

(7) 42 U.S.C. 300x-57. Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant.

(8) 42 U.S.C. 708. Maternal and Child Health Block Grant.

(9) 42 U.S.C. 5151. Disaster relief.

(10) 42 U.S.C. 8625. Low Income Home Energy Assistance Program.

(11) 42 U.S.C. 9849. Head Start.

(12) 42 U.S.C. 9918. Community Services Block Grant Program.

(13) 42 U.S.C. 10406. Family Violence Prevention and Services.

(d)(1) A grant applicant or recipient may rely on applicable Federal protections for religious freedom and conscience, and application of a particular provision(s) of this section to specific contexts, procedures, or services shall

not be required where such protections apply.

(2) A grant applicant or recipient that seeks assurance consistent with paragraph (d)(1) of this section regarding the application of particular provision(s) of this part to specific contexts, procedures, or services may do so by submitting a notification in writing to the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR). Notification may be provided by the grant applicant or recipient at any time, including before an investigation is initiated or during the pendency of an investigation. The notification must include:

(i) The particular provision(s) of this section from which the applicant or recipient asserts they are exempt under Federal religious freedom or conscience protections;

(ii) The legal basis supporting the applicant's or recipient's exemption should include the standards governing the applicable Federal religious freedom and conscience protections, such as the provisions in the relevant statute from which the applicant or recipient is requesting an exemption; the Church, Coats-Snowe, and Weldon Amendments; the generally applicable requirements of the Religious Freedom Restoration Act (RFRA); and

(iii) The factual basis supporting the applicant's or recipient's exemption, including identification of the conflict between the applicant's or recipient's religious or conscience beliefs and the requirements of this section, which may include the specific contexts, procedures, or services that the applicant or recipient asserts will violate their religious or conscience beliefs overall or based on an individual matter related to a particular grant.

(3) A temporary exemption from administrative investigation and enforcement will take effect upon the applicant's or recipient's submission of the notification—regardless of whether the assurance is sought before or during an investigation. The temporary exemption is limited to the application of the particular provision(s) of the relevant statute as applied to the specific contexts, procedures, or services identified

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in the notification to the HHS awarding agency, ASFR, or OCR.

(i) If the notification is received before an investigation is initiated, within 30 days of receiving the notification, OCR, ASFR, or the HHS awarding agency must provide the applicant or recipient with email confirmation acknowledging receipt of the notification. The HHS awarding agency, working jointly with ASFR and OCR, will then work expeditiously to reach a determination of applicant's or recipient's notification request.

(ii) If the notification is received during the pendency of an investigation, the temporary exemption will exempt conduct as applied to the specific contexts, procedures, or services identified in the notification during the pendency of the HHS awarding agency's review and determination, working jointly with ASFR and OCR, regarding the notification request. The notification shall further serve as a defense to the relevant investigation or enforcement activity regarding the applicant or recipient until the final determination of the applicant's or recipient's exemption assurance request or the conclusion of the investigation.

(4) If the HHS awarding agency, working jointly with ASFR and OCR, makes a determination to provide assurance of the applicant's or recipient's exemption from the application of the relevant statutory provision(s) or that modified application of certain provision(s) is required, the HHS awarding agency, ASFR, or OCR, will provide the applicant or recipient the determination in writing, and if granted, the applicant or recipient will be considered exempt from OCR's administrative investigation and enforcement with regard to the application of that provision(s) as applied to the specific contexts, procedures, or services provided. The determination does not otherwise limit the application of any other provision of the relevant statute to the applicant or recipient or to other contexts, procedures, or services.

(5) An applicant or recipient subject to an adverse determination of its request for an exemption assurance may appeal the Department's determination under the administrative procedures set forth at 45 CFR part 81. The tem-

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porary exemption provided for in paragraph (f)(3) of this section will expire upon a final decision under 45 CFR part 81.

(6) A determination under this paragraph (d) is not final for purposes of judicial review until after a final decision under 45 CFR part 81.

(e) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

### § 300.305 Federal payment.

In addition to 2 CFR 200.305(b), the following requirement applies:

(a) For States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. To the extent that Treasury-State CMIA agreements and default procedures do not address expenditure of program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds, such funds must be expended before requesting additional cash payments.

(b) [Reserved]

### § 300.308 Revision of budget and program plans.

In addition to the requirements of 2 CFR 200.308(f) a recipient or subrecipient must also request approval from the Federal agency or pass-through entity for the inclusion of research patient care costs in research awards made for the performance of research work.

### § 300.315 Intangible property.

In addition to the requirements of 2 CFR 200.315(c), no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the Federal agency rights to inventions made by the recipient or subrecipient.

**Subpart E—Cost Principles**

**§ 300.414 Indirect costs.**

In addition to 2 CFR 200.414(c), the following specific indirect cost provisions apply:

(a) Indirect costs on training grants are limited to a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of \$25,000;

(b) Indirect costs on grants awarded to foreign organizations and foreign public entities and performed fully outside of the territorial limits of the U.S. may be paid to support the costs of compliance with federal requirements at a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of \$25,000; and

(c) Negotiated indirect costs may be paid to the American University, Beirut, and the World Health Organization.

HHS SELECTED ITEMS OF COST

**§ 300.477 Independent research and development costs.**

Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

**§ 300.478 Shared responsibility payments.**

(a) *Payments for failure to maintain minimum essential health coverage.* Any payments or assessments imposed on an individual or individuals pursuant to 26 U.S.C. 5000A(b) as a result of any failure to maintain minimum essential coverage as required by 26 U.S.C. 5000A(a) with respect to any period prior to January 1, 2019, are not allow-

able expenses under Federal awards from an HHS awarding agency.

(b) *Payments for failure to offer health coverage to employees.* Any payments or assessments imposed on an employer pursuant to 26 U.S.C. 4980H as a result of the employer's failure to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan are not allowable expenses under Federal awards from an HHS awarding agency.

APPENDICES I THROUGH VIII TO PART 300 [RESERVED]

2. At 89 FR 80064, Oct. 2, 2024, Part 300 was amended by transferring 45 CFR part 75, appendix IX, to appendix IX to part 300, effective Oct. 1, 2025.

**PARTS 301–375 [RESERVED]**

**PART 376—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

- 376.10 What does this part do?
- 376.20 Does this part apply to me?
- 376.30 What policies and procedures must I follow?

**Subpart A—General**

- 376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?
- 376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?

**Subpart B—Covered Transactions**

- 376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

- 376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?
- 376.370 What are the obligations of Medicare carriers and intermediaries?

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### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

376.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subpart E—Excluded Parties List System [Reserved]

### Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]

### Subpart G—Suspension [Reserved]

### Subpart H—Debarment [Reserved]

#### Subpart I—Definitions

376.935 Disqualified (HHS supplement to government-wide definition at 2 CFR 180.935).

376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

#### Subpart J [Reserved]

**AUTHORITY:** 5 U.S.C. 301; 31 U.S.C. 6101 (note); E.O. 12689 (3 CFR, 1989 Comp., p. 235); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 11738 (3 CFR, 1973 Comp., p. 799).

**SOURCE:** 72 FR 9234, Mar. 1, 2007, unless otherwise noted.

### § 376.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Health and Human Services (HHS or Department) policies and procedures for nonprocurement debarment and suspension. HHS thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in 2 CFR 180.20, section 3 of Executive Order 12549, “Debarment and Suspension”, Executive Order 12689, “Debarment and Suspension” and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

[72 FR 9234, Mar. 1, 2007, as amended at 85 FR 72906, Nov. 16, 2020]

### § 376.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180

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(see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a “covered transaction” under subpart B of 2 CFR part 180, as supplemented by this part, and the definition of nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in HHS suspension or debarment action;

(c) HHS debarment or suspension official;

(d) HHS grants officer, agreements officer, or other HHS official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 376.30 What policies and procedures must I follow?

The policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, including the corresponding section that HHS published in 2 CFR part 376 identified by the same section number. The contracts under a nonprocurement transaction, that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, 2 CFR 376.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, HHS policies and procedures are those in the OMB guidance at 2 CFR part 180.

### Subpart A—General

#### § 376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?

The HHS Debarring/Suspension Official has the authority to grant an exception to let an excluded person participate in a covered transaction as provided at 2 CFR 180.135.