

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. See 29 CFR part 98.

8. *Debarment and Suspension (E.O.’s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.’s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

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AUTHORITY: 31 U.S.C. 7500 *et seq.*; and OMB Circular No. A-133.

SOURCE: 64 FR 14539, Mar. 25, 1999, unless otherwise noted.

§ 96.0 Purpose and scope of part.

This part identifies the audit requirements for recipients and subrecipients of Department of Labor (DOL) awards and contains DOL’s procedures for the resolution of audits. It applies to all grants and contracts and other Federal awards provided by or on behalf of the DOL.

§96.1 Terminology.

As used in this part, the terms “Federal award,” “Federal financial assistance,” “recipient,” and “subrecipient” have the same meanings as the definitions in 29 CFR 99.105 of this title.

Subpart A—Audits of States, Local Governments, and Non-profit Organizations**§96.11 Purpose and scope of subpart.**

The regulations in this subpart and in 29 CFR part 99 implement Office of Management and Budget (OMB) Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” which was issued pursuant to The Single Audit Act Amendments of 1996 (Act). The Act builds upon earlier efforts to improve audits of Federal financial assistance programs. This subpart establishes uniform audit requirements and policy for recipients and subrecipients that receive Federal financial assistance from DOL.

§96.12 Audit requirements.

(a) Organizations covered by this subpart are responsible for arranging for independent audits that meet the requirements of this section.

(b) The audit requirements contained in 29 CFR part 99 shall be followed for audits of all fiscal years beginning after June 30, 1996.

(c) Except as provided in paragraph (d) of this section, the audit requirements applicable to earlier fiscal years under regulations and award conditions in force when the awards were made shall continue in force.

(d) The Secretary or his/her designee may provide written notice to recipients/subrecipients subject to paragraph (c) of this section directing them to follow the requirements of 29 CFR 99.320, which provides for submission of audit data collection forms and reporting packages to a Federal clearinghouse designated by OMB.

Subpart B [Reserved]**Subpart C—Audits of Entities Not Covered by Subpart A****§96.31 Purpose and scope of subpart.**

This subpart prescribes the requirement for audits of recipients, subrecipients, contractors, and subcontractors that receive funds from the DOL and are not covered by subpart A.

§96.32 Audit requirement.

The Secretary of Labor is responsible for the survey, audit or examination of recipients, subrecipients, contractors, and subcontractors covered by this subpart. Such surveys, audits, or examinations shall be conducted at the Secretary’s discretion.

Subpart D—Access to Records, Audit Standards and Relation of Organization-wide Audits to Other Audit Requirements**§96.41 Access to records.**

The Secretary of Labor, the DOL Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives (including certified public accountants under contract), shall have access to any books, documents, papers, and records (manual and automated) of the entity receiving funds from DOL and its subrecipients/subcontractors for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

§96.42 Audit standards.

Surveys, audits, and examinations will conform to the Government auditing standards, issued by the Comptroller General of the United States, and guides issued by the Secretary. For purposes of meeting audit requirements under subparts A and C, only the standards for financial and compliance audits need apply.

§ 96.43 Relation of organization-wide audits to other audit requirements.

To the extent that audits conducted in accordance with subpart A provide DOL officials with the information needed to carry out their responsibilities under Federal law or DOL regulations, the Secretary shall rely upon and use the information. Additional audit efforts are not precluded, but such efforts must build upon the organization-wide audit and not duplicate it. The provisions of subpart A do not authorize a covered entity, after having complied with those requirements, to constrain, in any manner, the Secretary from carrying out additional surveys, audits, or examinations as deemed necessary.

Subpart E—Audit Resolution

§ 96.51 Purpose and scope of subpart.

This subpart prescribes standards for resolution of audit findings, including, but not limited to, questioned costs and administrative deficiencies, identified as a result of the audit of grant agreements, contracts, and other agreements awarded by or on behalf of DOL. In cases where these standards conflict with statutes or other DOL regulations, the latter shall be controlling. The DOL Office of Inspector General (OIG) is available to assist agencies in the audit resolution process.

§ 96.52 Pre-resolution phase activities.

(a) *Submission of reports.* Recipients and subrecipients of DOL funds that are audited in accordance with the requirements of subpart A shall comply in all respects with the report submission requirements of 29 CFR part 99. Failure to submit a complete audit package will result in the return of the submitted package by the Clearinghouse, which will assign a delinquency classification until the completed package is submitted.

(b) *Quality control.* The Office of Inspector General, in conjunction with other Federal agencies, will implement an audit quality program which may include random, planned, or directed reviews of audits submitted in compliance with OMB Circular A-133. When audits are found not to be performed in

compliance with the requirements, the OIG may share the findings with the auditor, the auditee, and the funding agencies, and may work with the local licensing authorities to achieve corrective action.

§ 96.53 Audit resolution generally.

The DOL official(s) responsible for audit resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(a) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(b) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(c) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

- (1) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;
- (2) Lists those matters upon which the parties continue to disagree;
- (3) Lists any modifications to the factual findings and conclusions set forth in the initial determination;
- (4) Lists any sanctions and required corrective actions; and
- (5) Sets forth any appeal rights.

(d) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

§96.54 Responsibility for subrecipient audits.

Recipients of Federal assistance from DOL are responsible for ensuring that subrecipient organizations who expend \$300,000 or more in a fiscal year are audited and that any audit findings are resolved in accordance with this part. The recipient shall:

(a) Determine whether appropriate audit requirements outlined in subpart A have been met;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of non-compliance with Federal law and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require that each subrecipient permit independent auditors to have access to the records and financial statements necessary to comply with this part.

Subpart F—Appeals

§96.61 Purpose and scope of subpart.

(a) The purpose of this subpart is to set forth procedures by which recipients and contractors may appeal final determinations by the DOL officials responsible for audit resolution as a result of audits.

(b) Subrecipients and subcontractors shall have only such appeal rights as may exist in subgrants or subcontracts with the respective recipients or contractors.

§96.62 Contracts.

(a) For the purpose of this subpart, the term "contract" includes all agreements described in sec. 602(a) of the Contract Disputes Act (Applicability of Law—Executive agency contracts) (41 U.S.C. 602(a)).

(b) Upon a contractor's receipt of the DOL contracting officer's final determination as a result of an audit, the contractor may appeal the final determination to the DOL Board of Contract Appeals, pursuant to 41 CFR part 29-60 and 48 CFR part 2933 or pursue such other remedies as may be available under the Contract Disputes Act.

§96.63 Federal financial assistance.

The DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of

the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.*

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW, Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived.

Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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