

Department of Health and Human Services

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(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (GRANTEES WHO ARE INDIVIDUALS)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

PART 77—REMEDIAL ACTIONS APPLICABLE TO LETTER OF CREDIT ADMINISTRATION

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 50 FR 781, Jan. 7, 1985, unless otherwise noted.

§ 77.1 Purpose.

Letters of credit with the United States Treasury, issued by the Department to States or other grantees and contractors, are a convenient means for disbursing Federal funds to recipients of grant awards or contracts (recipient organizations) under the programs of this and other Executive Departments. The sound and efficient operation of the letter-of-credit system is dependent in large part upon the honesty, good faith, and responsible financial management of recipient organizations that receive funds pursuant to letters of credit. This part sets forth conditions that may prompt the Department to seek remedial action against a recipient organization operating under a letter of credit and the procedures that will be used to reach a final decision regarding the taking of

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remedial actions against a recipient organization.

§ 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:

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(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