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HHS Agencies Revise Antidiscrimination Language

ACF, CDC, HRSA T&Cs Now Follow Updated HHS
Grants Policy Statement

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Federal Grants Management Module

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Three agencies under the Department of Health and Human Services (HHS) — the Administration for Children and Families (ACF), Centers for Disease Control and Prevention (CDC) and Health Resources and Services Administration (HRSA) — have now revised their federal fiscal year 2025 grant standard terms and conditions (T&Cs) with new language

included in a recent *HHS Grants Policy Statement* update on antidiscrimination laws.

The agencies' T&Cs previously had used civil rights assurance language included in an update to the *Statement* that became effective on April 16. That language stated that new awards issued on or after May 8 must comply with all federal antidiscrimination laws material to the government's payment decisions for purposes of 31 U.S.C.

§3729(b)(4). Along with defining federal antidiscrimination laws; discriminatory prohibited boycotts; diversity, equity and inclusion (DEI); diversity, equity, inclusion and accessibility (DEIA); and discriminatory equity ideology, the provision stated that by accepting the grant award, recipients were "certifying that: (i) they do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI,

DEIA or discriminatory equity ideology in violation of federal antidiscrimination laws; and (2) they will not engage in, and will not during the term of this award engage in, a discriminatory prohibited boycott.”

The provision went on to state that HHS “reserves the right to terminate financial assistance awards and claw back all funds if the recipients, during the term of this award, operate any program in violation of federal antidiscrimination laws or engages in prohibited boycott.”

Since then, Department of Justice (DOJ) issued a July 29 memorandum to all federal agencies and recipients of federal funding urging them to follow federal antidiscrimination law, emphasizing that the agency will consider programs supporting diversity, equity and inclusion (DEI) as discriminatory (see [“DOJ Memo Defines Federal Stance On Unlawful](#)

[Discrimination](#)"). The July 29 memorandum clarifies how the federal government will apply antidiscrimination laws and provides nonbinding best practices. "Entities that receive federal financial assistance or that are otherwise subject to federal antidiscrimination laws, including educational institutions, state and local governments, and public and private employers, should review this guidance carefully to ensure all programs comply with their legal obligations," DOJ explains in the memorandum.

Updated Grants Policy Statement

Whether or not HHS is now alluding to this governmentwide policy, it has again revised the civil rights assurances provision in the [Statement](#), effective July 24, to simply say:

"By applying for or accepting federal funds from HHS, recipients certify compliance with all federal

antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams. Recipients are responsible for ensuring subrecipients, contractors and partners also comply.”

ACF, CDC and HRSA have amended the antidiscrimination provision in their standard T&Cs to include this new language.

Enforcement, Termination Provisions

ACF also in recent weeks has updated its standard T&Cs — which clarify that HHS will be transitioning from 45 C.F.R. Part 75 to provisions in the uniform guidance at 2 C.F.R. Parts 200 and 300 as of Oct 1 (see [“HHS To Implement 2 C.F.R. Part 200 in Dual Phases,”](#) November 2024) — to revise its section on enforcement and add a new termination provision.

This enforcement section now states that failure to comply with the T&Cs of the award may result in an enforcement remedy such as a disallowance, restricted drawdown, withholding of future awards, deferral of claims for federal financial participation or termination of the award. Some programs may have more specific termination provisions that will be referenced in the notice of funding opportunity, the program-specific supplemental terms and conditions, notice of award, and/or in the specific award conditions (as applicable).

Likewise, per 45 C.F.R. §75.352(h) (or §200.332(j) on or after Oct. 1), recipients must consider taking enforcement actions on any noncompliant subawards as described in 45 C.F.R. §75.371 (or §200.339 on or after Oct. 1) and on contracts in accordance with 45 C.F.R. §75.335 (or §200.327 on or

after Oct. 1).

This enforcement provision adds that when conducting procurement transactions, states and Indian Tribes must follow the same policies and procedures they use for nonfederal funds. If they have no such policies and procedures, states and Indian tribes must follow the procurement standards under the uniform guidance (45 C.F.R. §§75.326-75.335 or §§200.317-200.327 on or after Oct. 1).

Under the new termination provision, ACF states that new awards and funded modifications (including supplements to awards, and competing and noncompeting continuation awards), that are issued on or after July 25 may be terminated if circumstances apply either based on current provisions under 45 C.F.R Part 75 or the uniform

guidance as of Oct. 1, unless the award is exempt. Exempt programs are those that are subject to a federal statute, such as a mandatory grant authorizing statute, or listed at 45 C.F.R. §75.101(d)(1)-(4) (or §200.101(e)(1-4) as of Oct. 1).

Prior to Oct. 1, awards will be subject to the termination provisions at 45 C.F.R. §75.372. After Oct. 1, awards will be subject to the termination provisions at §200.340. Beginning on that date, ACF may terminate an award “in part or in its entirety based upon: (1) the availability of appropriated funds, (2) the recipient’s satisfactory progress in achieving the goals or objectives of the project; (3) the recipient’s compliance with the terms and conditions of a previous award; or (4) for whatever reason continued funding would not be in the best interests of the federal government (including when a grant no longer effectuates the program goals or

agency priorities). Under this term and condition, an award may be terminated at any point during the performance period, including during a budget period.”

For More Information

The ACF terms and conditions are available at <https://tinyurl.com/ybpvbyjc>.

The HRSA terms and conditions are available at <https://tinyurl.com/2j6f5bs3>.

The CDC terms and conditions are available at <https://tinyurl.com/3xmbzjhe>.

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