

OGAM when making small awards except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by HHS awarding agencies without seeking prior approval from the OGAM. OGAM will maintain a record of all requests for exceptions from the provisions of this part that have been approved for classes of awards or recipients.

(b) As a matter of Departmental policy, requests for individual case deviations will be considered favorably by HHS and its awarding agencies whenever the deviation will facilitate comprehensive or integrated service delivery, or multiple-source consolidated awards, unless the deviation would impair the integrity of the program.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, Mar. 22, 1996]

#### § 74.5 Subawards.

(a) Unless inconsistent with statutory requirements, this part (except for § 74.12 and the forms prescribed in § 74.22) shall apply to—

(1) Except for subawards under block grants (45 CFR part 96), all subawards received by institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations from any recipient of an HHS award, including any subawards received from States, local governments, and Indian tribal governments covered by 45 CFR part 92; and

(2) All subawards received from States by any entity, including a government entity, under the entitlement programs identified at 45 CFR part 92, § 92.4 (a), (a)(7), and (a)(8), except that §§ 74.12 and 74.25 of this part shall not apply.

(b) Except as provided in paragraph (a)(2) of this section, when State, local, and Indian Tribal government recipients of HHS awards make subawards to a government entity, they shall apply the regulations at 45 CFR part 92, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” or State rules, whichever apply, to such awards.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, Mar. 22, 1996]

### Subpart B—Pre-Award Requirements

SOURCE: 59 FR 43760, Aug. 25, 1994, unless otherwise noted.

#### § 74.10 Purpose.

Sections 74.11 through 74.17 prescribe forms and instructions and other pre-award matters to be used in applying for HHS awards.

#### § 74.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. The Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301-08, governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the HHS awarding agency.

(b) HHS awarding agencies shall notify the public of funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

#### § 74.12 Forms for applying for HHS financial assistance.

(a) HHS awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, “Controlling Paperwork Burdens on the Public,” with regard to all forms used in place of or as a supplement to the Standard Form 424 (SF-424) series. However, HHS awarding agencies should use the SF-424 series and its program narrative whenever possible.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the HHS awarding agency. Applicants shall submit the original and two copies of any applications