

§ 75.212 Reporting a determination that a recipient is not qualified for a Federal award.

(a) If an HHS awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 75.205(a)(2), the HHS awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in paragraph (a) of this section is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 75.205(a)(2), (*i.e.*, the entity was determined to be qualified based on all factors other than those two standards), and

(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.

(b) The HHS awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if it makes the Federal award to the non-Federal entity and includes specific award terms and conditions, as described in § 75.207.

(c) If an HHS awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the HHS awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110-417, as amended (41 U.S.C. 2313), then archived;

(3) Each HHS awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) HHS awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for the future Federal award.

(d) If an HHS awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the HHS awarding agency must correct the information in the system within three business days;

(2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the HHS awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) HHS awarding agencies shall not post any information that will be made publicly available in the non-public segment of the designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the HHS awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the HHS awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the HHS awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

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