

October 23, 2012

Disputes and Appeals under Office of the National Coordinator for Health Information Technology Grants and Cooperative Agreements

NOTE: Grants Management Advisories (GMAs) provide guidance for Office of the National Coordinator for Health Information Technology (ONC) grant and cooperative agreement recipients in selected areas based on ONC's receipt of recurring questions or other factors. Their purpose is to provide a common interpretation for all ONC recipients of how ONC will apply existing policy as reflected in award terms and conditions. They do not replace or modify award terms and conditions.

This revised GMA supersedes the original version of GMA 2012-04.

ISSUES:

Does ONC have any process to follow if you disagree with an ONC decision concerning your grant or cooperative agreement?

Are there any limits on the types of decisions that you can formally dispute?

If you can formally dispute a decision, what are the timing and other requirements of the process?

What is the impact of a dispute or appeal on your award or the Federal government's collection of amounts due?

KEY POINTS:

- During the award, post-award, and closeout processes, ONC may make a number of decisions concerning your award.
- The time to address issues normally would be before ONC makes a final decision, e.g., by providing all requested information to ONC within any timeframe specified.
- You may not always agree with ONC's decision. We will work with you to ensure that you understand the basis for and reasoning behind our decision.
- For some adverse decisions, there is a formal administrative appeal right to the Departmental Appeals Board (DAB), which serves as a neutral third party. You should be aware of the types of decisions that you can dispute by filing a formal appeal and those that you cannot. These are summarized in the attachment to this GMA.
- You may appeal the following types of ONC decisions to the DAB:
 - A cost disallowance or other determination denying payment of an amount claimed under an award, or requiring return or set-off of funds already received. This does not apply to determinations of award amount or disposition of unobligated balances, or selection in the award of an option for disposition of program income.
 - A termination for failure to comply with the terms of an award.

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- A denial of a noncompeting continuation award under the project period system of funding where denial is for failure to comply with the terms of a previous award.
- A voiding (i.e., a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained).
- If the decision is not in one of the categories indicated above, then it is not appealable. This includes ONC disapproval of prior-approval requests. For non-appealable decisions, you may informally request that the individual who made the decision reconsider it, but that individual is not required to reconsider the decision. If you believe the decision was arbitrary, you may send a written request for reconsideration to the ONC Chief Grants Management Officer, whose contact information you may obtain from the grants management officer (GMO) that signed your award. In the meantime, you are not relieved of complying with the ONC decision.
- The notification of an adverse determination from the ONC GMO or other ONC official will contain a statement of your appeal rights, if any; the time frame for submission of an appeal, which, when applicable, is 30 days from the date of the notification; and other instructions.
- To appeal to the DAB, you must submit a timely written request for review detailing the nature of your disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification.
- Once you file your appeal, the DAB will determine whether it has the jurisdiction for review. If the DAB accepts an appeal for review, it will notify you and ONC regarding further actions.
- If you are successful in an appeal, the decision will indicate the expected action by ONC.
- Interest on any amount owed accrues from the date of our notification to you, but will not be charged if the amount due is paid within 30 days of that date. Even if you appeal to the DAB, you may want to pay the amount due to avoid interest penalties and late charges in the event that the appeal is unsuccessful. If you appeal and choose not to pay within 30 days of our notification, we will delay the effort to collect any amounts owed pending the outcome of the appeal, but you still will be liable for applicable interest and related charges.
- Legal costs incurred in defending or prosecuting claims, whether equitable or monetary, including administrative grant appeals, are unallowable charges, except as provided in the applicable cost principles.

RECIPIENT RESPONSIBILITIES:

- Avoid non-compliance with award terms and conditions that might result in an adverse ONC decision.
- Be responsive to ONC requests for information, which might allow ONC to avoid an adverse decision.
- For decisions that may be appealed under 45 CFR Part 16, you must submit any appeal request within the 30 days allowed in order for the DAB to review the appeal for jurisdiction.

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- If the DAB accepts your appeal for review, you must respond to requests for information from DAB in a timely manner.
- Promptly pay any amounts owed ONC.

REFERENCES:

45 CFR Part 16

45 CFR Part 30

HHS Grants Policy Statement

CONTACT: If you have any questions concerning this GMA, contact your GMO.

Summary of Appeal Rights to the Departmental Appeals Board

Type of Decision	Process Phase	Appeal Right
Decision not to make a new, competing supplemental, or renewal award, regardless of the reason	Pre-award or post-award	No
Decision not to make a non-competing continuation award	Post-award	No, unless the basis is failure of a recipient to comply with the terms of a previous award
Decision not to transfer a grant to another designated entity	Post-award	No
Decision to designate a recipient as high risk	Pre-award or post-award	No
Disapproval of a proposed cost in an application budget (either as a pre-award cost or to be incurred after award)	Pre-award	No
Disapproval of a prior-approval request (e.g., a change in Project Director or other key person, to incur a particular type of cost, to carry over an unobligated balance of Federal funds for awards with multiple budget periods, or for a no-cost extension of the project period)	Post-award	No
Disallowance of a cost incurred if determined unallowable	Post-award or closeout	Yes
Reduction of the Federal share if matching requirement not met	Post-award	No
Decision to terminate an award for material failure to comply	Post-award	Yes
Decision to terminate an award in whole if the recipient requests termination in part	Post-award	Yes