

Chapter 16

Records Retention

INTRODUCTION

This chapter provides guidance for grantees and subgrantees on proper maintenance of financial and programmatic records. These records must be accessible to authorized Federal and awarding agency staff and verifiable for monitoring, reporting, audit, and evaluation. This chapter contains the following sections:

- Applicability of Requirements
- Length of Retention Period
- Other Rules
- Examples.

APPLICABILITY OF REQUIREMENTS

The requirements applicable to States, local governmental entities, and Indian tribes are found in 29 CFR 97.42. These requirements apply equally to grantees and subgrantees and include financial and program records, supporting documents, and other records that are either “required to be held by regulation or grant agreement” or could “reasonably be considered as pertinent” to regulation or the grant agreement.

The record retention requirements applicable to institutions of higher education, hospitals, other nonprofits, and commercial organizations are found in 29 CFR 95.53. As with State grantees, these requirements apply equally to both recipients/grantees and subrecipients/subgrantees. The requirements apply to “financial records, supporting documents, statistical records, and all other records pertinent to a grant.” Commercial organizations are also subject to these requirements.

LENGTH OF RETENTION PERIOD

Both 29 CFR 97.42 and 29 CFR 95.53 require that records must be retained for three years following the date on which the expenditure report containing the final expenditures charged to a program year’s allotment or a grant is submitted to the DOL. For example, if any of the FY 1998 allotment is unexpended by September 30, 1998, and carried over into FY 1999, and the annual expenditure report containing the final expenditures to the FY 1998 allotment is submitted on August 15, 2000, then all FY 1998 records must be retained until August 15, 2003 (three years following August 15, 2000). These dates assume no audit/litigation problems that would

extend the required retention period. A competitive grantee is governed by the grant agreement and the applicable requirements of Part 97 or Part 95. For example, if a competitive grant expires on September 30, 2000, and the grantee submits the final expenditure report on December 31, 2000, then the records related to the grant must be maintained until December 31, 2003 (three years following December 31, 2000).

Subrecipient Level

The rules apply equally to recipients and subrecipients under both administrative regulations. This will have a major effect on State or other direct recipients, requiring them to be cognizant of the time limitations on an individual grantee basis. There could be a wide variance in record retention requirements for a grantee. Without a mechanism to track record retention requirements, the grantee runs a risk of destroying records that may be pertinent in the event of a later complaint or audit resolution process, even though records are to be maintained until audits are resolved. One method of resolving this would be for the grantee to take physical custody of any records it feels may fall within this category. While the probability of issues arising may be rare, recipients and subrecipients should carefully review retention time frames.

Example. A subgrantee has a contract with an ending date of June 30, 1999. In accordance with the grantee's closeout policy, a final expenditure report is submitted on July 25, 1999, triggering the three-year retention period. There are no subsequent audit issues. However, the grantee does not submit its final expenditure report for the funding period until August 15, 2000. Should there be unresolved complaint issues at the grantee level, and records of the subgrantee could aid the grantee in litigation, the grantee would need to take physical custody of the records on July 25, 2002, to ensure the records are available.

Closeout and Audit Resolution

The records retention period does not start over if final expenditure reports are revised for the following reasons:

Revisions Resulting from Closeout. Federal Grant Officers must close out each annual grant agreement in a timely period after the award's funding period (three years) has expired. If a final expenditure report is revised, the record retention clock is not reset to zero on the date of the submittal of the revision. Such revisions are considered expenditure adjustments and do not alter the initial time period for record retention.

Retention Resulting from Litigation, Audit/Audit Resolution, or Claim. Generally, records must be maintained for three years following the submission of the final expenditure report or until all issues resulting from litigation, audit/audit resolution, or claims have been resolved, whichever is longer. If financial reports must be revised based on resolution activities, the records retention clock is not reset to zero on the date that the adjusted financial report is submitted.

OTHER RULES

Retention Rules

The following retention rules apply to specific records:

- # **Nonexpendable Property Records** must be retained for three years after final disposition of the property. [29 CFR 97.42(e)]

- # **Complaint Records** and actions related to resolving complaints shall be maintained for not less than three years from the date of resolving the complaint. [29 CFR 32.49] In addition, grantees and subgrantees must follow the requirements of 29 CFR 34.24(c) if a JTPA grantee, as these regulations apply to the entire organization receiving JTPA funds. These records should be maintained as a whole record system. Those WtW grantees and subgrantees that will be receiving WIA funds will be subject to the record retention requirements of 29 CFR Part 37 (to be published as Interim Final regulations in June, 1999) as well.

- # **Litigation/Audit Records** are to be retained beyond the prescribed period if any litigation or audit has begun, or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records must be retained until resolution of the litigation, audit, or claim, dictated by 29 CFR 97.42(b)(2); or until the end of the regular three-year record retention period, whichever is later. Records must be retained beyond the prescribed period in the event of delays or failure to obtain or resolve a required and appropriate audit. Failure to obtain an audit extends the record retention requirement indefinitely. A delay in obtaining an audit or in resolving audit findings extends the record retention period until all audit requirements have been satisfied and all findings have been resolved to the satisfaction of the awarding agency.

Custody of Records

To avoid duplicate record keeping, grant recipients may make special arrangements with subrecipients, vendors, and others to retain records that are continuously needed for joint use. The grant recipient may request transfer of records to its custody when it determines that the records possess long-term value. When the records are transferred to or maintained by the grant recipient, the retention requirement does not apply to the entity that relinquished its records.

Termination of Relationship

If the relationship with a subrecipient is terminated, the grant recipient is responsible for the maintenance and retention of the records of any subrecipient unable or unwilling to physically retain them.

Record Storage

Records shall be retained and stored in a manner which will preserve their integrity and admissibility as evidence in any audit or other proceeding. The burden of production and authentication of the records shall be on the custodian of the records.

Microfilmed or photocopied records can be substituted for original records because they are generally accepted as admissible for evidentiary purposes. DOL does not take a position on the use of electronic media for the storage of records, but this should not be construed to mean that they cannot be used. Because of rapid advances in technology, the better approach is to specify the criteria that must be met for whatever medium is used for record storage. When choosing media for record retention, the custodian must ensure security safeguards and protections sufficient for the records to be accepted by a court as evidence.

As in any case where a record is maintained, the burden of producing and authenticating it is on the custodian of the record, and failure to authenticate the record will deny the custodian the right to use it for any evidentiary purpose. Thus, if a WtW grantee maintains its participant eligibility records on computer files and is unable to show that the records were secure or were tamperproof, the records cannot be used to prove that participants were eligible for WtW services.

Access to Records

The DOL, Director - Office of Civil Rights, the Comptroller General of the United States, the grant recipient, or any of their authorized representatives have the timely and reasonable right of access to pertinent books, documents, papers, or other records of grant recipients, subrecipients, vendors, and others to make audits, examinations, excerpts, and transcripts. The rights of access are not limited to the required retention period but last as long as the records are retained. The Director - Office of Civil Rights has the same rights of access described above per the requirements of 29 CFR 34.24(b) of the EEO regulations.

Recipients/subrecipients have the right and responsibility to define conditions for providing access to records (i.e., time and place).

The Freedom of Information Act and Privacy Act (5 U.S.C. 552a) do not apply to WtW records in the possession of recipients and subrecipients. The provisions of these Acts apply only to recipients'/subrecipients' records if they have been transferred to the Secretary of Labor.

Fees may be charged only to recover the costs of processing information requests.

Disaster Recovery

Occasionally, records are destroyed by fires, vandalism, or natural disasters such as floods, storms, and earthquakes. The recipient should ensure that each entity with record retention responsibility has a satisfactory plan of record recovery if critical records are lost. An example is off-site storage of computerized/microfilmed records.

Additional Considerations

In implementing record retention policies, recipients and subrecipients must consider State and local policies and requirements. However, these local requirements cannot be less restrictive than the Federal requirement. Also, all entities should consider State statutes of limitations and the importance of records in the event of unforeseen litigation.

EXAMPLES

Example. Based on the record retention requirements, the outside date for the State-level retention of FY 1998 records is December 30, 2004. This example assumes no litigation/financial report revision issues:

Fiscal Year ends	9/30/99
End of 2nd year	9/30/00
End of 3rd year	9/30/01
Final financial report submitted 90 days after end of 3rd year	12/30/01
End of three-year retention period	12/30/04

Example. Funds allotted for FY 1998 are fully exhausted on March 30, 2000. A final expenditure report for FY 1998 is submitted to ETA on June 30, 2000. For purposes of record retention, the key date is when the final financial report was submitted to ETA—June 30, 2000. The three-year record retention clock begins on July 1, 2000, and runs out on June 30, 2003.

The key point of this example is that, if funds for a particular funding period are exhausted in advance of the allowed three-year period of availability, a final expenditure report may be submitted for that year of appropriation, which will trigger the record retention clock. In this example, if no litigation or audit has been initiated or no claim is instituted, the records may be destroyed after June 30, 2003.