

***NOTE: Health centers are governed by a board of directors. Decisions regarding changes to a health center's organizational/corporate status as well as whether to apply for future awards are the responsibility of the health center's board.***

***This document is intended to serve only as a guide on how changes to corporate structures may impact the Health Center Program Federal award or result in a change in the award recipient, and to highlight related considerations.***

***This document is not to be construed as new program or grants policy, legal advice, or a directive on such matters from HRSA.***

## Overview of Changes to Health Center Corporate Structure and Potential Impact on the Health Center Program Federal Award

The HHS Grants Policy Statement (GPS) requires grant recipients to provide an HHS awarding agency (including HRSA) advance notice of certain changes in organizational status, including mergers<sup>1</sup>, successors-in-interest<sup>2</sup>, and name changes.<sup>3</sup> Specifically, if the change would be

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<sup>1</sup> A merger is a legal action resulting in the unification of two or more legal entities. Review the HHS Grants Policy Statement for additional details (see: <http://www.hrsa.gov/grants/hhsgrantspolicy.pdf>).

<sup>2</sup> Successor in interest (SII) is a process whereby the rights to, and obligations of, an OPDIV grant(s) (and, possibly, other Federal grants) are acquired incidental to the transfer of all of the assets of the recipient or all of that part of the assets involved in the performance of the grant. Such transfer may result from legislative action or other legal action such as a merger (i.e., the unification of two or more legal entities), divestiture, or other corporate change. Indicators of an SII include, but are not limited to, substantial continuity of the same business operations; use of the same plant/facility; continuity of the work force; similarity of jobs and working conditions; and provision of similar products and services. The result is a change in the organizational entity with legal and financial responsibility for the grant, but no change in the organizational segment actually performing the approved project. Review the HHS Grants Policy Statement for additional details (see: <http://www.hrsa.gov/grants/hhsgrantspolicy.pdf>).

<sup>3</sup> If a Health Center Program award recipient is involved in a corporate transaction that will not alter the organization's legal identity but would simply result in a "name change," the organization need only notify HRSA of the change. A name change is an action whereby the name of an organization is changed without otherwise affecting the rights and obligations of that organization as a recipient. Thus the steps described in this document DO NOT APPLY if changes to a Federal awardee's corporate structure will not otherwise affect the rights and obligations of the health center as a Health Center Program Federal award recipient. Examples of such changes would include: a reorganization of a unit of city government that changes the name of the office that receives the health center Federal award but does not change the Employer Identification Number (EIN) or project personnel; a new corporation that continues to use the existing EIN of the Federal awardee after a corporate change. In such situations, the health center would simply submit a Prior Approval Request via the HRSA Electronic Handbooks (EHB), selecting "Other" for the type or Prior Approval Submission and indicating "Name Change" to obtain HRSA review and acknowledgement of these changes. In all cases, Health Center Program Federal awardees must maintain the approved scope of project; if a name change will impact the approved scope of scope of project, these changes may require additional approvals (e.g., a change in scope request for sites or services). Review the HHS Grants Policy Statement for additional details (see: <http://www.hrsa.gov/grants/hhsgrantspolicy.pdf>).

considered a change of the grantee organization (i.e., its legal identity), as described in “Prior-Approval Requirements—OPDIV Prior Approval” within the HHS GPS) the recipient must obtain prior approval rather than simply providing notice of its intent.

Therefore, a Health Center Program Federal award recipient that alters its legal identity through a corporate transaction, which could result from a merger (the unification of two or more entities), an acquisition (being acquired by another entity), or other organizational actions, must submit a written request to HRSA, as further described below, for a change in Federal award recipient.<sup>4</sup> The prior approval request, if approved, would result in transfer of the Health Center Program Federal award, including all associated rights and obligations, to the new organization (see examples below) recognized by HRSA as the successor-in-interest (SII) to the Health Center Program Federal award. Some common examples of corporate changes that health centers may be involved in include:

- A Health Center Program Federal award recipient becomes the subsidiary of or is acquired by another organization.
- A Health Center Program Federal award recipient merges with another organization to form an entirely new organization.

In order to complete a **change in Federal award recipient action** that will result in transfer of the Federal award to a SII, the formal request and HRSA review process generally will include the following steps:

- The current Federal award recipient must submit a formal (written) request for the transfer of the Federal award to the SII organization in the form and manner prescribed by HRSA . The request must, among other things, relinquish the Health Center Program Federal award back to HRSA and acknowledge the Federal award recipient’s agreement to complete certain required grant closeout actions.
- The SII organization must provide documentation showing that it is eligible to receive the Federal award and that it will carry out the full scope of project as approved by HRSA under the previous Federal award. The latter documentation must address all elements of the health center scope of project, including the approved service sites, services, providers, service area(s) and target population(s).
- For the request to become effective, HRSA must review and approve the eligibility, capacity, scope of project, as well as the compliance of the SII organization with all Health Center Program requirements.
- If HRSA approves the request, the Health Center Program Federal award will be transferred to the SII. If the SII is a new organization, not previously funded under the Health Center Program, the project period will follow that of the original Federal award recipient. If the SII is a current Health Center Program award recipient, the project period will follow the most recently approved project period of the new Federal award recipient.

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<sup>4</sup> The Federal award recipient is the organization named on the current Notice of Award.

*For additional information on submission requirements please review the detailed list of key action steps and documents in the sections below and also see:*

*<http://www.hrsa.gov/grants/hhsgrantspolicy.pdf> “Changes in Organizational Status,” (pg II-82). Please note that this document only addresses the transfer of awards made under HRSA’s Health Center Program from an existing awardee to an SII organization and does not address other issues relating to the legal responsibilities of either organizations, nor does it address the impact on other Federal awards the organization may hold from agencies outside of HRSA.*

#### **Federal Award Recipient Actions That Are Not Federal Award Transfers**

The following actions taken by a Health Center Program Federal award recipient will result in the announcement of a Service Area Competition (SAC) by HRSA to identify a new Federal award recipient, as these action do not fit the definition of a Federal Award Transfer that would result in a SII:

- A Health Center Program Federal award recipient voluntarily chooses to terminate its Federal award prior to the Project Period end date and submits a formal request to HRSA to relinquish the award.<sup>5</sup>
- A Health Center Program Federal award recipient chooses to no longer compete for their service area at the end of the Project Period.

The rare circumstance under which HRSA will consider approving a non-competitive transfer of the award to another organization is when HRSA determines it is necessary based on a clear and immediate need to avoid a disruption in health center services to patients in the service area. In such cases HRSA may choose to initiate a non-competitive temporary Federal award Transfer (“Replacement Grant”) for no longer than 18 months. The Federal award for the service area will then be competed through the Service Area Competition process within 18 months, consistent with HHS policy, and the initial Federal award transfer will be publicly announced via Federal Register Notice.

*This guidance provides clarifying information **only** regarding the HHS grants policy cited above. As such, it does not alter, amend, or otherwise implement other HHS grants policy, including requirements for competition of Federal grant awards.*

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<sup>5</sup> As defined in 45 CFR 75.372 “The Federal award may be terminated in whole or in part as follows:..(3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; (4) ...However, if the HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.” This is further explained in the HHS Grants Policy Statement (See: “Change of Federal awardee Organization” pg II-53) as a situation in which “the original recipient has agreed to **relinquish** responsibility for an active project before the expiration of the approved project period.”

## Important Areas of Consideration for Health Centers Prior to Implementing a Corporate Change

- ✓ Have the boards of both organizations agreed to the merger or acquisition?
- ✓ Have both organizations fully assessed the financial consequences/impact of the acquisition/merger?
- ✓ Is the acquiring/new organization proposing to be recognized by HRSA as the SII to the Health Center Program Federal award?
- ✓ Have legal counsel for both organizations reviewed the acquisition/merger and prepared relevant documents and outlined key considerations (e.g., Federal interest, impact on any other HRSA Federal awards)?
- ✓ Is the proposed SII (acquiring/new) organization eligible for and compliant with all Health Center Program requirements at the time of the acquisition/merger and subsequent to the Federal award transfer?
- ✓ Is the proposed SII (acquiring/new) organization able to carry out the approved scope of project of the former Federal award recipient (e.g., provide services to the approved service area, target populations, overall patient capacity, location of sites, availability of services, overall access)?
- ✓ Have both organizations demonstrated their consideration and understanding of the other obligations and requirements of the Health Center Program Federal award (e.g., registration at SAM.gov, reporting requirements such as UDS, supplemental award requirements, impact on 340B participation, NHSC staff, FTCA coverage<sup>6</sup>)?
- ✓ Have both organizations considered the timing of this transaction and submitted the required documentation to HRSA **with sufficient time (generally six months) prior to the proposed effective date of the corporate change?**

## Key Actions Steps/Documents to Prepare When Submitting a Request to HRSA for a Change in Federal Award Recipient

**Current Health Center Program Federal Award Recipient (Transferor/Organization merging with or becoming part of the proposed SII):** Submit all of the following items via a Prior Approval Request in EHB.

- 1) A ***Statement of Relinquishment, signed by the Authorized Organizational Representative (AOR)***, that includes:
  - Health Center Program (H80) Grant Number.
  - The name and address of the Federal award recipient.
  - Name of the current CEO/ED/Project Director (the Authorizing Official in EHB or identified on the most recent Notice of Award).
  - A brief statement of the reasons for relinquishing all rights and interest in the Health

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<sup>6</sup> For additional information on the impact of relinquishing the Health Center Program Federal award on FTCA coverage, please review the Health Center FTCA Policy Manual available at: <http://www.bphc.hrsa.gov/ftca/healthcenters/ftcahcpcpolicymanual.html>.

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Prior Considerations and Key Process Steps for Requests to Change Federal Award Recipient

- Center Program Federal award (i.e., due to proposed corporate change).
  - Effective date of requested relinquishment (must be a date PRIOR to the current Project Period end date).
  - A statement indicating the Federal award recipient's willingness to end the Health Center Program project and related section 330 (H80) Federal award support and to relinquish all claims to any unobligated funds remaining in the Federal award, all claims to any future support of the project, and all federal benefits associated with receipt of Federal Health Center Program award funds.
  - A list of any OTHER non-section Health Center Program (H80) BPHC and/or HHS Federal awards for which the organization is still the Federal award recipient that will also transfer to the SII.
  - Any information related to Federal Interest created through HRSA awards, including Federal Interests arising from capital awards.
  - A list of all items of non-expendable personal property (equipment) costing \$5,000 or more purchased in whole or in part with Health Center Program (H80) Federal awards.
  - A list of any amounts to be refunded to HHS due to disallowed costs identified on the basis of an audit or other review.
  - The current unexpended balance under Health Center Program (H80) Federal award with signatures by the Federal award recipient's Financial Officer and CEO/ED/PD (i.e., the Health Center Program award recipient's Authorizing Official).
- 2) A **statement and/or board meeting minutes** signed by the chair of the health center's governing board acknowledging discussion and approval to relinquish the Health Center Program (H80) Federal award and to seek transfer by HRSA of all assets and liabilities (including all the Health Center Program Federal award activities) to the proposed successor in interest. **Note:** In cases where the Federal award recipient is a public entity/agency with a co-applicant governing board, the co-applicant governing board of the health center may also submit documentation related to the relinquishment. However, as the Federal award recipient of record is the public entity, HRSA's final decision regarding the relinquishment and any SII recognition will be based on the request of the public entity/agency.
- 3) A **completed Federal Financial Report (FFR)** showing total expenditures and obligations from the start of the current budget period through the new budget/project period end date proposed by the current Federal award recipient.

**REMINDER:** Notification to the Federal award recipient's designated HRSA Project Officer or Grants Management Specialist via email or phone is NOT sufficient for a formal relinquishment; complete information must be submitted as a prior approval request through EHB.

**Organization that is Requesting to Become the New Health Center Program Federal**

**Award Recipient (Transferee/SII):** Send an email or letter to the HRSA Project Officer and Grants Management Specialist that includes the following information:

- 1) A draft *Successor-in-Interest Agreement/Statement* that stipulates that the transfer will be properly completed in accordance with applicable law and that the agreement has been approved by the governing boards of both organizations (current Health Center Program Federal award recipient and proposed SII organization).
- 2) If the SII is a newly created entity and/or is not a current Health Center Program Federal award recipient, *documentation of SII's eligibility* to receive the Federal award (i.e., documentation showing that the organization is a public or nonprofit private entity, such as a tribal, faith-based, or community-based organization) must be provided (See current SAC application eligibility criteria for detailed list of documentation of private non-profit or public entity status). NOTE: this information is not required if the SII is a current Health Center Program Federal award recipient.
- 3) Documentation that the SII is currently in compliance with Health Center Program requirements.
  - a. If the SII is a current Health Center Program Federal recipient, HRSA will review current compliance status based on approved application, outstanding conditions of award and/or most recent Operational Site Visit. If the Federal award transfer is approved, HRSA may also conduct additional site visits to confirm the operational status of sites/services for the new service area.
  - b. If the SII is not a current Health Center Program Federal recipient, the organization may be required to submit additional information to demonstrate compliance and HRSA may verify compliance through a site visit.
- 4) Biographical sketches for the CEO/ED/PD (if not already on file for existing Federal recipients) and/or biographical sketches for any proposed new CEOs/PDs.
- 5) Statement and documentation indicating that the SII will carry out the approved scope of project of the current Federal award recipient consistent with their approved SAC application, including a description of the facilities and other resources available to carry out the project (completed [Form 5A Services](#) and [Form 5B Service Sites](#)).

***HRSA/BPHC will work with the proposed SII regarding the acceptability of these documents. Pending receipt of the above five items, if acceptable, HRSA will then require the following additional items in order to have HRSA's Office of Federal Assistance Management formally approve and complete the SII through the change in Federal Award Recipient process:***

- 6) The proposed SII's *letter of intent to accept* of the continuation of the Federal award with the unobligated fund amount to be transferred based on the completed FFR.
- 7) A completed [Application for Federal Assistance \(SF-424\)](#), which must include the SII's Entity Identification Number (EIN) and DUNS number.
- 8) Completed [Budget Information for Non-Construction Programs \(SF-424A\)](#) and a Line Item Budget Justification.

Prior Considerations and Key Process Steps for Requests to Change Federal Award Recipient

- 9) If applicable, a detailed list of any equipment purchased with funds from the original award that will be transferred to the SII (inclusion of this list indicates acceptance of title to the equipment).
- 10) If applicable, a detailed list of any property purchased or renovated with HRSA funds that will be transferred to the SII.
- 11) Any required project-specific assurances or verifications or lobbying forms (if not already on file for existing Health Center Program Federal award recipients).
- 12) Contact list for the Project Director, Business Official and Authorizing Official, including their prefix, name, physical address, e-mail, phone and fax contact information.
- 13) A request that the HRSA modify its records to reflect the SII as the Health Center Program Federal award recipient.

**Both Entities: Current Health Center Program Federal Award Recipient (Transferor)**

**AND New Health Center Program Federal Award Recipient (Transferee/SII):** Submit the following items *once the corporate acquisition/action between the entities has taken place*:

- 1) An opinion or attestation by legal counsel for the transferor and the transferee that the transfer was properly completed in accordance with applicable law and the effective date of transfer.
- 2) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed to receive the assets involved in the performance of the Health Center Program Federal award.

**HRSA:** HRSA will review the documents submitted per the requirements above, from both organizations to assess and determine the following:

- 1) Proposed Transferee/SII's eligibility, substantial continuity of the same health center project operations, and compliance status, including a review of the SII organization by HRSA's Division of Financial Integrity (DFI).
- 2) Transfer, on its face, and as supported by the opinion or attestation by counsel for the transferor and transferee, was completed in accordance with applicable law(s). Before HRSA accepts the grantee's relinquishment and approves the SII as an eligible Federal award recipient, HRSA must receive the instrument that transferred the assets from one entity to the other (e.g., bill of sale, certificate of merger, or decree of court). HRSA may also request and review any new or amended articles of incorporation and opinions or attestations of legal counsel.
- 3) Which conditions, terms, and reporting requirements have not been met/need to be met by the SII.
- 4) If any property issues/Federal Interest exists and appropriate next steps regarding any Federal interest with the SII.
- 5) If any outstanding unallowable costs from the entity relinquishing the grant will need to be addressed by the SII.
- 6) Whether to perform an Operational Site Visit in connection with the request for transfer (which may occur prior to or immediately after approval of the transfer, depending on the circumstances).

- 7) Timing of de-obligation of funds from current Health Center Program Federal award recipient and re-obligation of funds to the SII.
- 8) Alignment of future Service Area Competitions with the SII's project period end date.