



Category/Subject: Debt Collection Procedures for ETA unallowable costs
Colorado Policy Guidance Letter #: (prior #02-15-WIA)
Revise/Replace: N/A
Date: March 27, 2002
Distribution: Workforce Directors, Workforce Financial Staff, Employment and Training Program Staff, CDLE Financial Reporting and Analysis Staff, Internal Audit

I. REFERENCE(S):

Workforce Investment Act of 1998 (WIA), 20 CFR Part 652 et al. and Wagner-Peyser Act of 1933, as amended by Public Law 105-220 Workforce Investment Act of 1998, effective August 7, 1998.

II. PURPOSE:

To provide subrecipients with debt collection policies and procedures resulting from Employment and Training Administration (ETA) unallowable costs.

III. BACKGROUND:

The ETA holds its direct recipients liable for all misexpenditures of funds awarded to the recipient. The requirement is formalized in grant award documents or through regulation. The State is responsible for ensuring that all grant funds received under ETA-funded programs are appropriately expended. In addition, 29 CFR 97.53 and 95.73 provide the requirements for the collection of any amount due the awarding agency. Thus, the State must hold subrecipients responsible for ETA funds received through a grant, and may ultimately hold units of local government and other subrecipients liable for disallowed costs.

IV. POLICY/ACTION:

A. The following cost principles must be used to determine allowability for ETA grants.

Cost must be necessary and reasonable. Any cost charged to an ETA grant must be necessary and reasonable for the proper and efficient performance and administration of the grant. A grantee is required to exercise sound business practices and to comply with its procedures for charging costs.

Cost must be allocable. Cost must be clearly identifiable as benefiting the ETA grant program. Cost charged to the ETA grant should benefit only the ETA grant program, not other programs or activities. In order to be allocable, a cost must be treated consistently with like costs and incurred specifically for the program being charged. If other programs are conducted in addition to the authorized ETA grant,

allocation methods should be used to determine what share of costs should be charged to the ETA grant.

Cost must be authorized or not prohibited under Federal, State, or local laws or regulations. Cost incurred should not be prohibited by any Federal, State, or local laws.

Cost must receive consistent treatment by a grantee. Cost must be treated uniformly across program elements or from year to year.

Cost must not be used to meet matching or cost-sharing requirements. Costs may not be used, whether direct or indirect, as a match or to meet matching fund requirements unless specifically authorized in the enabling legislation or the grant terms.

Cost must be adequately documented. Costs incurred must be supported by required source documentation such as time and attendance records, bills and invoices, and canceled checks. The subrecipient's inability to produce such documentation is in itself supportable grounds for disallowing questioned costs.

Costs must conform to ETA grant exclusions and limitations. A subrecipient may not charge a cost to the ETA grant that is unallowable per the ETA grant regulations or the cost limitations specified in the regulations.

B. Allowable vs. Unallowable Costs.

It is important that all subrecipients become familiar with OMB circulars and the appropriate ETA program regulations regarding their particular program requirements. Costs may be allowable per the OMB circulars, allowable per the circulars but with conditions, or allowable per the circulars but unallowable per the ETA regulations. Also, some costs are allowable, but only with prior approval of either the Grant Officer or the Governor, or her/his designee.

C. Questioned and Disallowed Costs

Questioned cost. A cost that is questioned by the auditor because of an audit finding (1) that resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal Funds; (2) where the costs, at the time of the audit, are not supported by adequate documentation; or (3) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Disallowed costs. Those charges to an award that the DOL determines to be unallowable in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Every recipient of ETA funds is required to repay the amounts of funds received upon a determination that a misexpenditure of funds was due to willful disregard of the requirements of the Federal grant, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure.

In most instances, a cost will be disallowed if the basis is a clear and unequivocal violation of law and regulations. Costs can also be disallowed based on a violation of Federal grant terms and conditions that include the regulations and OMB circulars governing administrative standards and cost principles.

Subgrants and contracts can be more restrictive in the range of activities and types of costs permitted under that subgrant or contract than Federal or State rules and regulations. Therefore, it is possible that a cost could be unallowable under the subgrant / contract provisions but allowable under the State provisions and/or ETA-funded Federal regulations. The entity resolving an audit may or may not disallow the costs. However, an entity cannot require less than full compliance with the ETA-funded program legislation and its regulations. It is up to the agency to determine if the contract or grant requirements that are more restrictive than the Federal or state requirements should be waived. The decision is entirely discretionary.

D. Collection Procedures

When a resolution process results in a determination by an awarding agency that ETA funds have been misspent, a debt is established on the part of the subrecipient. The awarding agency is expected to collect the debt. However, if the subrecipient appeals, no further collection action will be taken pending the outcome of the appeal.

The preferred corrective action for disallowed costs from ETA grant funds is non-Federal cash repayment. The State of Colorado uses a process of three demand letters at about 30-day intervals to demand repayment. If no appeal has been filed, debts are considered delinquent, and subject to accrued interest charges, 30 days after the date of the Final Determination.

Once the State has issued the three demand letters and has not received payment for the debt, the grantee is subject to the use of offset as a debt collection method. Offset is authorized by the Debt Collection Act (PL 98-216, 31 U.S.C. 3711).

E. Appeals

The appeals process for WIA programs is defined in 20 CFR Part 667, Subpart H. The appeals process for non-WIA programs is defined in 29 CFR Part 96.

F. Waivers of Liability

The Act provides that a state may request that the Grant Officer waive the liability for a debt. A waiver will only be requested if:

- a. The misexpenditures occurred at the subrecipient level.
- b. The misexpenditures were not the result of gross negligence, a willful disregard of the Act and/or failure to follow accepted standards of administration.
- c. If the misexpenditures were due to fraud, they must have been perpetrated against the grantee or the subgrantee, and the grantee/subgrantee must have forcefully pursued

investigation, prosecution and debt collection against the perpetrator.

- d. The debt associated with the misexpenditures must have been established through the established audit resolution process and the grantees' appeals process exhausted.
- e. The grantee formally requests the waiver and provides documentation to support its claim of compliance with these requirements.

G. Substantial Violation Procedures

If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this title, and corrective action has not been taken, the Governor shall:

- a. Issue a notice of intent to revoke approval of all or part of the local plan affected; or
- b. Impose a reorganization plan, which may include:
 - 1. decertifying the local board involved;
 - 2. prohibiting the use of eligible providers;
 - 3. selecting an alternative entity to administer the program for the local area involved;
 - 4. merging the local area into one or more other local areas; or
 - 5. making other such changes as the Secretary or Governor determined necessary to secure compliance.

V. IMPLEMENTATION DATE:

This PGL is effective for disallowed cost identified on or after the issuance date of this PGL.

VI. INQUIRIES:

Please direct any question you have regarding this PGL to Keith McNeal at (303) 318-8158.

Elise Lowe-Vaughn, Director
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