



DAB Lessons Learned: Know Your Budgetary Boundaries



December 2022

When it comes to cost allowability and federal grants, CAAs must know where the budgetary boundaries lie. A recent decision by the Department of Health and Human Services (HHS) Departmental Appeals Board (DAB) confirmed the importance of that and included several key takeaways for federal grant recipients to consider as they allocate and administer their federal funds across different grant periods of performance. Note that this DAB decision references HHS's version of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (Uniform Guidance) and thus uses the terms "period of performance" and "budget period" interchangeably¹.

The decision, [Mobile Community Action, Inc., DAB No. 3064 \(2022\)](#), involved Mobile Community Action (the "grantee"), which appealed a cost disallowance of \$806,149 in Head Start funding. The Administration for Children and Families (ACF) initially disallowed costs after an audit revealed that the grantee's Head Start program had exceeded its allowable expenditures in Years 3 and 4 of its 5-year project period. A significant portion of the disallowed costs were drawn down on the Year 3 award to cover costs incurred during Year 2 that had exceeded the grantee's Year 2 approved budget.

The following key takeaways from the DAB's decision emphasize the importance of timing in the use and administration of such grants, especially with respect to multi-year project periods.

First, ensure that costs incurred under a federal grant benefit that grant's period of performance. In general, per the Uniform Guidance, federal grantees may charge to a federal award only those costs that are incurred during the period of performance of that award. [45 C.F.R. § 75.309\(a\)](#). In its decision, the DAB cited to multiple precedent decisions disallowing costs when funds from one budget period were used to pay for costs incurred in a different budget period. This practice violates the principles of allocability, which require that allowable costs charged to a federal award be allocable to that award. To be allocable, they must benefit the activities for which the award was made, and "benefit" means that the cost is related to cost objectives **as well as funding period**. Charging costs from one grant period of performance to a period in which those costs were not incurred violates these principles, because the period of performance charged receives no benefit from the costs.

An exception to this rule exists whereby grantees may charge certain "pre-award" costs that benefit a grant prior to the start of its period of performance. Pre-award costs are those "incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work." [45 C.F.R. § 75.458](#). Under

¹The DAB's decision cites to HHS's version of the Uniform Guidance, which includes a definition of "period of performance," but not "budget period." This version differs from the Uniform Guidance for federal awards generally (2 C.F.R. Part 200), which was amended in August 2020 to include definitions for both terms. The general Uniform Guidance attempted to clarify that a federal award's "period of performance" is not equivalent to its "budget period," and that it may include one or more budget periods.]



the Uniform Guidance, pre-award costs are allowable to the extent they would be if incurred within the grant period of performance, and only with prior written approval of HHS. [45 C.F.R. § 75.458](#). Keep in mind that pre-award costs are specific types of costs that directly relate to a federal award and are necessary for its performance, and must be approved in writing by the federal agency.

Second, notify a funding source of any deviations from the award budget, and, as required, receive prior written approval from the awarding agency. Under the Uniform Guidance, budget deviations and revisions generally require reports to and prior approval from the federal awarding agency. [45 C.F.R. § 75.308](#). Moving previously-budgeted costs or expenses from one budget period to another constitutes a budget revision for each of the affected years. The DAB decision underscores the need to account for and administer federal grants using accepted accounting practices so that budgets are tracked timely and accurately.

Third, budget periods for a federal award cannot be extended backward into a period prior to the start of the award's period of performance. While the Uniform Guidance allows federal awarding agencies to approve, upon written request from the grantee, a one-time grant extension for the period of performance for up to 12 months, extensions are forward-looking (i.e., they cannot extend a future grant to cover earlier budget periods. [45 C.F.R. § 75.308\(d\)\(2\)](#)). The Uniform Guidance adds that extensions cannot be solely for the purpose of using unobligated balances. [45 C.F.R. § 75.308\(d\)\(2\)](#). In other words, a grantee cannot seek an extension of a budget period simply because it has leftover grant funds that it did not spend down during the current budget period. Rather, such extensions are intended for situations where the grantee has a project or activity for which it has funds remaining and needs more time to complete. Any grantee seeking a budget period extension should comply with the process for doing so and understand that any such extension extends forward.

Following these lessons can help grantees, like CAAs, that administer multiple federal grants over different grant periods of performance avoid future confusion and potential disallowances.

This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Award Number 90ET0482-03. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of HHS and ACF. The contents of this publication are intended to convey general information only and do not constitute legal advice. Any communication through this publication or through CAPLAW's website does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.