Legal and financial information for the Community Action network

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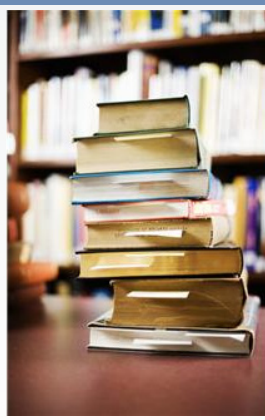
CAPLAW*update*



How the Supreme Court's Landmark Ruling on Same-Sex Marriage Affects Employee Benefits

By CAPLAW Legal Staff

In June 2013, the United States Supreme Court struck down Section 3 of the federal Defense of Marriage Act (DOMA) in United States v. Windsor.[1] Section 3 defined "marriage," for purposes of federal law, as the legal union of one man and one woman as husband and wife and "spouse" as a person of the opposite sex who is a husband or wife.[2] DOMA thus denied married same-sex couples recognition as such under more than 1,000 federal statutes that use marital and spousal status as a prerequisite to various rights, be nefits and responsibilities.[3] Among other things, the Windsor decision has an important impact on employee benefits provided to spouses in a same-sex marriage.

Immediately following the *Windsor* decision, it was clear that rights under employee benefit plans would be greatly expanded for same-sex spouses living in states

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Avoiding a Head Start Termination

By Cody Friesz, CAPLAW

With the implementation of the new Head Start designation renewal regulations, it is more important than ever for Community Action Agencies (CAAs) with Head Start programs to understand and avoid actions that resulted in other CAAs losing their Head Start funding. This article reviews three U.S. Department of Health and Human Services (HHS) Departmental Appeals Board (DAB) decisions that upheld Head Start terminations, discusses ways in which Head Start grantees failed to comply with the HHS regulations, and proposes actions for avoiding similar mistakes.

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that recognize same-sex marriage. However, it was less clear how same-sex spouses who were legally married in one jurisdiction would be treated for employee benefits purposes if they chose to live in a state that did not recognize their marriage. Since the Court's ruling, the Internal Revenue Service (IRS) and U.S. Department of Labor (DOL) have issued guidance clarifying the impact of the *Windsor* decision on employee benefits administration. The following questions and answers are intended to help Community Action Agencies (CAAs) better understand the *Windsor* decision and its impact on their benefit plans.

Windsor Decision and Guidance

What were the events that led to the filing of the Windsor *case?*

Edith Windsor met and began a committed relationship with Thea Spyer in 1963. Thirty years later, Ms. Windsor and Ms. Spyer registered as domestic partners when New York City gave same-sex couples that right. Then, in 2007, the two traveled to Canada and married, a marriage that was recognized by the State of New York. Two years later, Ms. Spyer died, leaving her entire estate to Ms. Windsor. Under federal tax law, property that passes from one spouse to another upon death is exempt from estate tax.[4] However, because of DOMA, same-sex married couples such as Ms. Windsor and Ms. Spyer did not receive the benefit of this exemption. Ms. Windsor, therefore, had to pay over $350,000 in federal estate tax. After paying the tax, she brought a refund suit, which ultimately made its way to the U.S. Supreme Court.

What is the legal basis for the Supreme Court's Windsor *Decision?*

> "The court in *Windsor* held that Section 3 of DOMA is unconstitutional as a deprivation of liberty..."

The Court in *Windsor* held that Section 3 of DOMA is unconstitutional as a deprivation of liberty protected by the Fifth Amendment's Due Process Clause, which the Court explained, contains within it the prohibition against denying to any person the equal protection of the laws. The Court ruled that Section 3 of DOMA violated this prohibition by treating same-sex couples recognized as legally married under state law differently from heterosexual couples whose marriages were recognized under the same law.[5] According to the Court, Congress's principal purpose in enacting DOMA was to impose inequality, rather than to further an interest such as governmental efficiency.[6] If equal protection means anything, the Court opined, at the very least it means that a "bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group."[7] The Court's decision in *Windsor* does not affect Section 2 of DOMA, which allows states to deny recognition to same-sex marriages performed in other states.

How will same-sex spouses be treated for federal tax purposes?

The IRS, in Revenue Ruling 2013-17 has stated that, as of September 2013, same-sex couples who were married in any state or other jurisdiction (including the District of Columbia, a U.S. territory or a foreign country) that recognizes same-sex marriage will be treated as married for all federal tax purposes, even if the couple lives in a state that does not recognize same-sex marriage. The ruling also specifies that couples (same-sex and opposite-sex) who enter into formal relationships (such as domestic partnerships or civil unions) that are recognized but not considered to be marriage under state law (such as domestic partnerships or civil unions) will not be considered married for purposes of federal tax law.

How will same-sex spouses be treated by the DOL?

DOL Technical Release No. 2013-04 provides guidance to employee benefit plans, plan sponsors, plan fiduciaries, and plan participants and beneficiaries on the meaning of "spouse" and "marriage" as these terms appear in the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code that the DOL interprets. Now, the term "spouse" will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who live in a state that does not recognize such marriages. Similarly, the term "marriage" will be read to include a same-sex marriage that is legally recognized as a marriage under any state law. In certain circumstances ERISA takes precedence over (i.e., preempts) state laws on employee benefits.

Which states recognize same-sex marriage?

Currently, the following 17 states and the District of Columbia allow same-sex couples to marry: California, Connecticut, Delaware, Hawaii, Illinois (law will take effect June 1, 2014), Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New Hampshire, New York, Rhode Island, Vermont, Washington.

Health Benefit Plans

Is a CAA required to cover same-sex spouses under its health plan?

"...this guidance does not require employers to change their health plans to include same-sex spouses."

The existing IRS and DOL guidance does not require an employer to offer health plan coverage to an employee's same-sex spouse.

The rules that apply to an employer's health plan depend on state law and whether the plan is fully or self-insured. A fully insured plan is one where the employer contracts with and pays premiums to an insurance company to cover the health care costs of its employees and dependents. A self-insured plan is an arrangement whereby an employer provides health or disability benefits to employees with its own funds (as opposed to paying premiums to an insurer which then bears the cost/risk of paying out benefits).

If an organization sponsors a fully insured health plan, it will likely be subject to its state's insurance laws. State insurance laws are not preempted by ERISA so if same-sex marriage is not recognized in an employer's state, that employer will not be required to extend benefits coverage to same-sex spouses. Before the employer decides not to extend benefits to same-sex spouses, it should check its state's discrimination laws to ensure that sexual orientation is not included as a protected class. If the state's discrimination laws include sexual orientation as a protected class, the employer may violate those laws by extending health benefits to opposite-sex spouses and not same-sex spouses. If a state recognizes same-sex marriages, an employer will need to check the state insurance laws to determine if it is required to cover same-sex spouses if it extends coverage to opposite-sex spouses and, again, to ensure compliance with the state's discrimination laws. An employer may still extend benefits to same-sex spouses even if the state does not recognize same-sex marriage.

"A self-insured plan is an arrangement whereby an employer provides health or disability benefits to employees with its own funds..."

Self-insured group health plans are subject to the federal ERISA and, if the term "spouse" is not clearly defined in the health plan documents, the plan could be subject to the more inclusive "spouse" and "marriage" definition set forth in DOL Technical Release discussed above. If an employer with a self-insured plan does not want to cover same-sex spouses, it should work with an employee benefits attorney to ensure that its plan documents reflect this intent. As previously discussed, the employer should check its state's discrimination laws to ensure compliance. Typically self-insured plans are not covered by a state's discrimination laws because of exceptions in the state laws or on ERISA preemption grounds. However, an employer should still ensure that they are not subject to a state's discrimination laws or to any potential expansions in federal discrimination laws to include sexual orientation as a protected class.

If a CAA covers same-sex spouses under its health plan, what are the federal tax consequences for employees?

Prior to the *Windsor* ruling, health benefits provided to employees' same-sex spouses were treated differently than those provided to opposite-sex spouses. For example, the employer's share of premiums for a same-sex spouse's health insurance coverage had to be treated as taxable compensation for federal income tax purposes and the employee could not pay his/her share of those premiums on a pre-tax basis through a cafeteria plan. However, after the Court's ruling, the employer's share of health insurance premiums for employees and their spouses, regardless of sex, will not be taxable for federal income tax purposes and all employees whose spouses are covered by their employer's health insurance plan will be allowed to pay their share of premiums on a pre-tax basis if the employer has a cafeteria plan that provides spousal coverage.

Furthermore, Revenue Ruling 2013-27 states that affected same-sex spouses may rely on its holdings for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refunds for all years for which the period of limitations for filing a refund is open. Generally, a taxpayer may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. As a result, employees may file an amended Form 1040 to recover the federal income tax paid on the value of the health coverage of the employee's spouse and to recover income taxes paid on premiums that the employee paid on an after-tax basis for same-sex spouse's health coverage through a cafeteria plan. Employers may also file Form 941-X for refunds to claim the Social Security taxes and Medicare taxes paid on the health benefits provided to employees' same-sex spouses.[8]

If a CAA covers same-sex spouses under its health plan, what are the state tax consequences for employees?

If a state does not recognize same-sex marriage and an employer extends benefits to same-sex spouses, most likely the employer's share of the premium for an employee's same-sex spouse would be treated as taxable compensation for state income tax purposes. However, an employer should work with a tax and/or employee benefits attorney in its state to ensure compliance with its state's tax laws, including tax treatment for employee contributions for same-sex spouses made under a cafeteria plan.

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Are same-sex spouses entitled to HIPAA special enrollment rights?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) special enrollment rights are now available to same-sex spouses. Special enrollment allows eligible individuals who previously declined health coverage to enroll in coverage under a group health plan without regard to a plan's open enrollment period. Rights arise upon loss of eligibility for other coverage or upon the occurrence of certain life events such as a divorce, a separation or employment termination.[9]

As a federal law, HIPAA is subject to the *Windsor* decision and as a result, HIPAA special enrollment rights must now be extended to same-sex spouses covered under an employer's group health plan. Thus, if a CAA covers same-sex spouses under its group health plan, they have the right to enroll in the health plan shortly after they marry or after one spouse loses health coverage due to a qualifying event (such as employment termination or reduction in work hours), rather than having to wait for the next open enrollment period.

Are same-sex spouses entitled to COBRA continuation coverage?

"Same-sex spouses are now eligible to elect continuation of employer-provided health insurance coverage..."

Same-sex spouses are now eligible to elect continuation of employer-provided health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) upon the occurrence of a qualifying event. COBRA is a federal law that requires employers with at least 20 employees to extend coverage to individuals who lose it due to certain circumstances. Spouses are considered to be among the categories of "qualified beneficiaries" of COBRA coverage and, as a result of the *Windsor* decision, the term spouses now includes "same-sex spouses." If a CAA covers same-sex spouses under its health plan, to ensure compliance with COBRA notification requirements, employers should distribute the health plan's COBRA General Notice to same-sex spouses.

Are same-sex spouses entitled to mini-COBRA continuation coverage?

Many states have laws similar to COBRA that apply to employers with fewer than 20 employees. These laws are often referred to as "mini-COBRA" statutes. For employers with fully insured health plans subject to state laws, if the state recognizes same-sex marriage, an employer covered by the state's mini-COBRA requirements will most likely be required to offer mini-COBRA coverage to same-sex spouses. For employers with self-insured plans not subject to state laws, an employer would not be required to extend min-COBRA coverage to a same-sex spouse.

Cafeteria Plans (Including FSAs and HSAs)

If a CAA covers same-sex spouses under its health plan, may a cafeteria plan permit a participant to make a mid-year election change?

"...a cafeteria plan may treat a participant who was married to a same-sex spouse as of the date of the Windsor decision... as if the participant experienced a change in legal marital status."

A cafeteria plan may permit an employee to revoke an election during a period of coverage and make a new election under certain circumstances including a change in status event, such as a change in legal marital status or a significant change in the cost of coverage. IRS Notice 2014-1 clarifies that a cafeteria plan may treat a participant who was married to a same-sex spouse as of the date of the *Windsor* decision (June 26, 2013) as if the participant experienced a change in legal marital status. The participant would be permitted to revoke an existing election and make a new election in a manner consistent with the change in legal marital status. For purposes of election changes due to the *Windsor* decision, an election could be accepted by the cafeteria plan if filed at any time during the cafeteria plan year that includes June 26, 2013, or the cafeteria plan year that includes December 16, 2013. A cafeteria plan could also permit a participant who married a same-sex spouse after June 26, 2013, to make a mid-year election change due to a change in legal marital status. It is important to note that, any election made with respect to a same-sex spouse (and/or the spouse's dependents) must satisfy the requirements of the regulations concerning election changes generally.[10]

The Notice also explains that a mid-year election change may not normally be based on a change in the tax treatment of a benefit offered under a cafeteria plan because a change in tax treatment generally does not constitute a significant change in the cost of coverage. However, because of the legal uncertainty created by the *Windsor* decision, cafeteria plans may have permitted employees with same-sex spouses to make mid-year election changes on this basis. Because, as explained above, mid-year election changes on the basis of a change in marital status would have been permitted, a cafeteria plan will not be treated as having failed to meet the cafeteria plan requirements for periods between June 26 and December 31, 2013 solely because the plan permitted a participant with a same-sex spouse to make a mid-year election change based on a plan administrator's interpretation that the change in tax treatment of spousal health coverage arising from the *Windsor* decision resulted in a significant change in the cost of health coverage.

May a cafeteria plan permit a participant's FSA to reimburse covered expenses incurred by the participant's same-sex spouse?

IRS Notice 2014-1 explains that a cafeteria plan may permit a participant's Flexible Spending Account (FSA), including a health, dependent care, or adoption assistance FSA, to reimburse covered expenses of the participant's same-

sex spouse or the same-sex spouse's dependent that were incurred during a period beginning on a date that is no earlier than (a) the beginning of the cafeteria plan year that includes the date of the *Windsor* decision or (b) the date of marriage, if later. For this purpose, the same-sex spouse may be treated as covered by the FSA (even if the participant had initially elected self-only coverage under the FSA).[11]

Are same-sex spouses subject to the joint deduction limit for contributions to a HSA?

IRS Notice 2014-1 also explains that the health savings account (HSA) deduction limit applies to same-sex spouses with respect to a taxable year (that is, couples who remain married as of the last day of the taxable year), including the 2013 taxable year. An HSA is a trust that is created or organized exclusively for the purpose of paying the qualified medical expenses of the account beneficiary and that satisfies other delineated requirements. The term "qualified medical expenses" is defined to include amounts paid by a beneficiary for medical care for that individual and the spouse of that individual. The maximum deduction for the 2013 taxable year is limited to $6,450 (as adjusted for cost-of-living increases) in the case of an eligible individual who has family coverage under a high-deductible health plan (HDHP). In the case of married individuals either one of whom has family coverage under a HDHP, the HSA deduction limitation is divided equally between the spouses unless they agree on a different division.[12]

If the combined HSA contributions elected by two same-sex spouses exceed the applicable HSA contribution limit for a married couple, contributions for one or both of the spouses must be distributed to the spouses before their tax return due date.

Are same-sex spouses subject to the exclusion limit for contributions to a dependent care FSA?

"The FSA maximum annual contribution limit of $5,000 for a married couple applies to same-sex spouses who are married for federal tax purposes..."

The FSA maximum annual contribution limit of $5,000 for a married couple applies to same-sex spouses who are married for federal tax purposes as of the last day of the taxable year, including the 2013 taxable year.

If the combined dependent care FSA contributions elected by the same-sex spouses exceed the applicable contribution limit for a married couple, contributions for one or both of the spouses may be reduced for the remaining portion of the tax year in order to avoid exceeding the applicable contribution limit. To the extent that the combined contributions to the dependent care FSAs of the married couple exceed the applicable contribution limit, the amount of excess contributions will be includable in the spouses' gross income.[13]

Retirement Plans

How do the Windsor *decision and guidance affect an organization's qualified retirement plan?*

A qualified retirement plan is one that meets certain Internal Revenue Code requirements and is set up by an employer for the benefit of employees or their beneficiaries. There are two kinds of qualified retirement plans: defined contribution plans, such as 401(k) or 403(b) plans, and defined benefit plans. As a result of the *Windsor* decision and IRS Revenue Ruling 2013-17:

- Participants must obtain spousal consent before designating a non-spousal beneficiary or taking a plan loan from a defined contribution plan that permits loans;
- Participants in defined contribution plans may take hardship distributions (for medical expenses, tuition, funeral expenses) for a same-sex spouse's qualifying expenses regardless of whether the spouse is named as the primary beneficiary (prior to the *Windsor* decision, a participant could only take hardship distributions for expenses of a same-sex spouse if the same-sex spouse was named as the primary beneficiary); and
- The rights of a participant's same-sex spouse upon the participant's death have changed rather than having to roll over an elegible roll over distribution into a so-called "inherited" IRA, they now can roll over the distribution to any eligible retirement plan. Moreover, if the funds are rolled over into an IRA, a participant's surviving same-sex spouse can now defer distribution of those funds until the year the participant would have turned 70 1/2 years old, rather than having to have the funds distributed within five years of the participant's death.[14]

A qualified retirement plan also enables same sex-spouses to receive benefits in the form of:

- A qualified joint and survivor annuity (QJSA) or a qualified optional survivor annuity (QOSA), unless the participant elects another payment form and the spouse consents (prior to the *Windsor* decision, same-sex spousal consent was not required for a participant to elect a different form of payment) and
- A qualified preretirement survivor annuity (QPSA) if the participant dies prior to retirement, unless the spouse waives this right.

Employee Leave

How does the Windsor *decision affect how FMLA Leave is administered?*

The Family and Medical Leave Act (FMLA), in part, requires an employer to give an employee unpaid job-protected leave to care for a spouse with a serious health condition, to address certain matters relating to a spouse's active military duty, and to care for a spouse who is a covered service

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member. Prior to the *Windsor* decision, the FMLA did not protect employees who took leave relating to their same-sex spouses. Since the definition of spouse for purposes of the FMLA is determined by the state in which the employee resides, now employees who live in states that recognize same-sex marriage, will be eligible for the different types of FMLA leave relating to the care or military service of a same-sex spouse.[15] However, employees who live in states that do not recognize same-sex marriage will not be entitled to FMLA leave under the same circumstances.

Action Steps for Employers

The *Windsor* decision significantly changes the administration of employee benefits for employees with same-sex spouses. Employers should continue to watch for further guidance regarding the impact of the decision on how the administration of employee benefit. In the meantime, employers should:

- Review benefit plan documents to determine how they define the term "spouse" and whether that definition is consistent with the employer's intentions. Make any necessary or desired plan amendments and update all forms as needed.
- Work with their payroll department or service to ensure that employees whose same-sex spouses are enrolled in the organization's health plan are not being taxed on the employer's share of health insurance premiums for their spouses and that the employee's share of premiums is being paid on a pre-tax basis if the employer has a cafeteria plan that provides spousal coverage.
- Disseminate the COBRA General Notice, along with other disclosures required to be provided to spouses (for example, the annual funding notice for defined benefit retirement plans), to the same-sex spouses of health and qualified retirement plan participants.
- Determine enrollment options for same-sex spouses if they are covered by the health benefits plan.
- Communicate changes in health and qualified retirement plans to participants (for example, through a summary of material modifications). The communications should include a description of each change and its effective date.
- Consider how employee benefit plans will treat civil unions and domestic partnerships in light of expanding coverage and recognition of same-sex spousal benefits.[16]

Because of the complexities of employee benefits laws, CAPLAW recommends consulting with an experienced employee benefits attorney when making changes to benefit plan documents and administration.

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Avoiding Head Start Termination
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Overview of Head Start Monitoring Requirements

The Head Start Act requires that HHS conduct a full review of every Head Start grantee once every three years.[1] During this review, if HHS finds any "deficiencies" the grantee must be notified in a timely manner.[2] A deficiency is a systemic or substantial material failure in an area of performance that involves, among other things, a failure to comply with standards related to early childhood development and health services, family and community partnerships, or program design and management; the misuse of funds; and failure to meet Federal and State requirements that the grantee is unwilling or unable to correct.[3] After receiving notification of one or more deficiencies, the grantee has a specified amount of time, never to exceed a year, to correct the identified deficiencies.[4] A follow-up review will then be conducted.[5] If that review shows that one or more of the deficiencies has not been corrected, HHS must terminate the grantee's Head Start award.[6]

Providing Accurate, Current and Complete Disclosure of Financial Results

All Head Start grantees must comply with HHS's codification of the uniform administrative requirements (OMB Circular A-110).[7] In turn, these regulations require all nonprofit grantees to establish a financial management system that provides "accurate, current and complete disclosure of the financial results" of federally funded programs.[8] The uniform administrative requirements also incorporate the federal cost principles (OMB Circular A-122)[9] for determining which costs are allowable

> "...regulations require all nonprofit grantees to establish a financial management system..."

Article End Notes

How the Supreme Court's Landmark Ruling on Same-Sex Marriage Affects Employee Benefits

1. *U.S. v. Windsor*, 133 S. Ct. 2675 (2013).
2. Codified as 1 U.S.C. § 7.
3. *Windsor*, 133 S. Ct. at 2679.
4. *See* 26 U.S.C. § 2056(a).
5. *Windsor*, 133 S. Ct. at 2695.
6. *Id.* at 2693-2694.
7. *Id.* at 2693.
8. *IRS Answers to Frequently Asked Questions for Individuals of the Same Sex Who are Married Under State Law*, http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples.
9. *DOL EBISA FAQs About Portability Of Health Coverage And HIPAA*, http://www.dol.gov/ebsa/faqs/faq_consumer_hipaa.html.
10. IRS Notice 2014-1 (issued December 16, 2013), http://www.irs.gov/pub/irs-drop/n-14-01.pdf.
11. *Id.*
12. *Id.*
13. *Id.*
14. IRS Revenue Ruling 2013-17, http://www.irs.gov/pub/irs-drop/rr-13-17.pdf, and *IRS Answers to Frequently Asked Questions for Individuals of the Same Sex Who are Married Under State Law*, http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples.
15. *DOL Fact Sheet #28F: Qualifying Reasons for Leave under the Family Medical Leave Act*, http://www.dol.gov/whd/regs/compliance/whdfs28f.htm.
16. *See IRS Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions*, http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions.

Avoiding a Head Start Termination

1. 42 U.S.C. § 9836a(c)(1).
2. 42 U.S.C. § 9836a(e)(1)(A).
3. 42 U.S.C. § 9832(2)(A).
4. 42 U.S.C. § 9836a(e)(1)(B).
5. 42 U.S.C. § 9836a(c)(1)(C).
6. 42 U.S.C. § 9836a(e)(1)(C); 45 C.F.R § 1307.3.
7. Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations, OMB Circular A-110 codified by the Department of Health and Human Services at 45 C.F.R. Part 74.
8. 45 C.F.R. §§ 74.21(b)(1).
9. Cost Principles for Non-Profit Organizations, OMB Circular A-122 codified at 2 C.F.R. Part 230.
10. 45 C.F.R. § 74.27(a).
11. New Hanover County Community Action, Inc., DAB No. 2478 (2012).
12. *See* 2 C.F.R. Part 230, App. A, ¶¶ B-C.
13. 2 C.F.R. Part 230, App. A, ¶ B.1. A cost objective is a particular work unit, such as a division, grant, project, program, etc., for which information regarding costs related to the unit is collected, See Id. at App. A, ¶ E(1)(g).
14. Id. at App. A, ¶ C(1).
15. Id. at App. A, ¶¶ D-E.
16. Id. at App. A, ¶ D.
17. Id.
18. 2 C.F.R. Part 230, App. A, ¶ E.1.e.
19. *See* 2 C.F.R. Part 230, App. A, ¶¶ D.2.a, D.2.d, & E.1.a.
20. 45 C.F.R. § 74.23(h)(3).
21. 2 C.F.R. Part 230, App. B, ¶ 11.a; 2 C.F.R. Part 230, App. B, ¶ 43.b, c.
22. *See* 45 C.F.R. § 74.2 (defining federal share to include the percentage of property improvement costs paid for with federal funds).
23. 45 C.F.R. § 74.21(b)(3).
24. H.O.P.E. Community Services, Inc., DAB No. 2487 (2012).
25. 45 C.F.R. § 74.22(b)(2).
26. Id. (emphasis added).
27. 2 C.F.R. Part 230, App. A, ¶ A.4.b.
28. *See* 45 C.F.R. § 74.22(b)(2) and 2 C.F.R. Part 230, App. A, ¶ A.4.b.
29. Southwest Arkansas Development Council, Inc., DAB No. 2489 (2012).
30. 45 C.F.R. § 1304.51(i)(2).
31. 45 C.F.R. § 1304.60(c).

DAB Disallowance Lessons: Document and Use Funds for Specified Activities

1. East Chicago Community Health Center, DAB No. 2494 (2013).
2. Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations, OMB Circular A-110 codified by the Department of Health and Human Services at 45 C.F.R.