



DAB Disallowance Lessons: Document and Use Funds for Specified Activities

By Cody Friesz, CAPLAW

East Chicago Community Health Center, DAB No. 2494 (2013)

A recent Department of Health and Human Services (HHS) Departmental Appeals Board (DAB) decision¹ highlights how important it is for federal grant recipients to ensure their grant funds are expended only for the specific activities or programs for which they were awarded. Moreover, the decision illustrates the significance of proper and adequate documentation.

Factual Background

In June 2009, a nonprofit community health center received a Capital Improvement Program (CIP) grant in the amount of \$661,181 from the Health Resources and Services Administration (HRSA). The grant was to be used to renovate its OB/GYN suite and upgrade its telephone system. The program budget included categories for equipment, construction/alteration and renovation and other. It did not provide for any salaries, wages or consulting costs.

After an independent audit, a number of the health center's grant fund expenditures were called into question. In particular, the auditor identified approximately \$370,000 spent on costs that did not appear in the grant documents, such as monthly IT maintenance, interim CEO services and salaries for employees to oversee construction projects. Additionally, the auditor noted that nearly \$137,000 in drawdowns and disbursements were not supported by adequate documentation.

Based upon the auditor's findings, HRSA disallowed \$507,779 of the CIP grant. The health center appealed the decision. For reasons discussed below, the DAB upheld the disallowance.

When reviewing a federal agency's determination to disallow a nonprofit grantee's costs, the DAB applies the uniform administrative requirements for federal grants,² in this case the Department of Health and Human Services' (HHS) codification at 45 C.F.R. Part 74, and the federal cost principles.³ The federal cost principles require all costs charged to a grant be allowable. To be allowable, a cost must be "reasonable for the performance of the award,"⁴ allocable to the award and adequately documented.⁵

The HHS uniform administrative requirements require grantees to have in place a financial management system. That system must provide documents that identify the source and application of funds expended for HHS-sponsored activities and "accounting records...that are supported by source documentation."⁶ Additionally, prior DAB decisions have held that grantees are responsible for documenting the allowability of costs and proving that costs are in fact allowable.⁷

"To be allowable, a cost must be 'reasonable for the performance of the award...'"

Analyzing the DAB Decision

HRSA's disallowance was based upon two factors. First, a number of the costs were not allowable or allocable to the health center's grant. Second, the expenses and drawdowns that potentially were allowable and allocable lacked documentation adequate to support them.

Allowable and Allocable

The DAB first addressed the expenditures for IT maintenance and related services. The health center did not dispute charging these costs to the CIP grant, even though they were not included in either the original or modified grant documents. Instead, the health center argued that the costs should be allowable because they are the type of expense the CIP grant was established to fund.

The DAB found that, even if the IT expenses were something HRSA could award a CIP grant for, they still had to be allocable to the *specific* activities for which the health center was awarded the grant. Therefore, in this particular case, all costs had to benefit the OB/GYN renovation and/or telephone system upgrade.

The DAB stressed that grantees are not allowed to use federal funds in any way they desire, even if that use

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supports the general purpose of the grant program. Rather, grantees are limited to uses that are allowable and allocable under the actual award they receive. The DAB explained that the uniform administrative requirements permit grantees to change the scope of a non-construction project; however, the grantee must *first* receive *prior* approval from the administering agency.

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Adequate Documentation

When addressing the disallowed costs associated with the interim CEO services, employee salaries, drawdowns and disbursements, the DAB emphasized that it is not enough for costs to be allowable and allocable; they must also be supported by adequate documentation. Also, the DAB explained that the grantee bears the burden of documenting the existence and allowability of expended federal funds. For example, in this case, the health center asserted that grant funds were used only for allowable expenses and not for unallowable costs, such as the interim CEO services. To support this allegation, the health center submitted itemized payment records, which included payments for interim CEO services. However, the documentation failed to show the sources from which payments were made for each item. Therefore, it could not be established that non-CIP funds were used to pay for the CEO services.

Additionally, the health center's documentation did not show that the other, allegedly allowable costs were incurred for either the OB/GYN renovation and/or the telephone system upgrade. In fact, some records submitted by the health center referenced unrelated projects. Other documentation included line items for renovation expenses but did not break down the costs or explain how the expenses related to the CIP grant.

Moreover, most documentation provided by the health center to substantiate the questionable drawdowns was not for the time period in question. On the other hand, when documents did relate to the relevant period, they failed to provide specific information about what was purchased and how it related to the grant projects. For example, one invoice was for "IT service" and another for "Vision CHC Management and Desktop Support" with no further explanation. The

health center stated that the invoices were for "allowable site renovation costs," but the DAB explained that assertions are not evidence and could not substitute for adequate documentation.

Finally, the health center attempted to substantiate the questioned disbursements, but once more its documentation was inadequate. The DAB found again that the documentation failed to reflect that the health center made payments to vendors either on the dates in question or for the amounts stated.

Key takeaways from this DAB decision include:

- All costs must be allocable to the *specific* activities for which a grant is awarded. Just because a cost may support the general purpose of a grant program does not mean the grantee can circumvent the terms of an actual award.
- Grantees can change the scope and objective of an award; however, they must comply with applicable grant requirements, such as receiving *written prior* approval from the awarding agency.
- Document. Document. Document.
 - Each purchase or service should be documented to show how it relates to a specific funding source.
 - The budget should include all of the different, anticipated costs that might be incurred, including salaries if applicable.
 - Invoices, alone, are not adequate documentation. If a vendor is paid for multiple products or services, the payment record should include:
 - » An itemized breakdown of every item purchased and its cost;
 - » The source the funds used to pay for each item, particularly when a single payment includes both allowable and non-allowable costs; AND
 - » Supporting source documents such as invoices, receipts, purchase orders, etc.

(See endnotes on page 22-23)

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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).

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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.

Article End Notes

Part 74.

3. Cost Principles For Non-Profit Organizations, OMB Circular A-122 codified at 2 C.F.R. Part 230.
4. 2 C.F.R. § 230, App. A ¶ A.2.a.
5. See 2 C.F.R. § 230, App. ¶ A.2.a, A.2.g.
6. 45 C.F.R. § 74.21(b)(2), (7).
7. See Touch of Love Ministries, Inc., DAB No. 2393 (2011); Northstar Youth Servs., Inc., DAB No. 1884 (2003).

Disecting Federal WARN Act Compliance

1. 29 U.S.C.S. § 2101(a)(1).
2. 29 U.S.C.S. § 2101(a)(8).
3. 29 U.S.C.S. § 2101(a)(2).
4. 29 U.S.C.S. § 2101(a)(3).
5. 29 U.S.C.S. §§ 2101(a)(2) and 2101(a)(3)(B).
6. 29 U.S.C.S. § 2102(d).
7. 29 U.S.C.S. § 2101(a)(6).
8. 20 C.F.R. § 639.9(b).
9. 29 U.S.C.S. § 2104(a).