



Disallowance for Costs Extending Beyond Budget Period Upheld

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S.A.G.E. Communications Services, DAB No. 2481 (2012)

Determining when costs may be properly charged to an award can be tricky, especially when the funding received is for a long-term project. In this Department of Health and Human Services (HHS) Department of Appeals Board (DAB) decision, the DAB upheld the disallowance of \$22,941 for rent, van lease and health insurance payments charged to a nonprofit's federal grant that was awarded annually to fund a five-year project. The DAB found that the nonprofit erroneously charged costs resulting from obligations occurring after the budget period for one of the annual awards had ended.

Background

S.A.G.E. Communication Services, Inc. (S.A.G.E.), a nonprofit organization located in Macon, Georgia, received from the Administration for Children and Families (ACF) a grant to fund a five-year project, the Community-Based Abstinence Education (CBAE) program. The project period ran from September 2006 through September 2011 and, after the first year of funding, ACF granted S.A.G.E. noncompeting annual awards for the subsequent years. Each award specified the budget period and the approved budget for that period. The budget year at issue was fiscal year (FY) 2009, September 30, 2008 through September 29, 2009.

In January 2011 an independent auditor reviewed S.A.G.E.'s financial statements for FYs 2009 and 2010 and issued an OMB Circular A-133 single audit report on S.A.G.E.'s compliance with applicable federal program requirements. The auditor found that S.A.G.E. was reimbursed for the following non-compliant costs charged to the FY 2009 budget:

- \$11,340 for prepaid rent for nine months beyond the end of the FY 2009 budget year;
- \$5,544 for prepayment on a van lease for the months of January 2010 through October 2010; and
- Prepayment for health insurance for the period from July 2009 to June 2010, \$6,057 of which was allocable to the period beyond September 30, 2009.

The auditor determined that these costs did not result from obligations incurred during FY 2009 and the costs were not pre-award costs authorized by ACF in its agreement with S.A.G.E. As a result, ACF issued a determination notifying S.A.G.E. that it was disallowing the \$22,941 identified in the auditor's report. S.A.G.E. appealed ACF's determination to the DAB.

Overview of Applicable Laws

The award notice for the CBAE grant stated that nonprofit grant recipients must comply with the uniform administrative requirements codified at 45 C.F.R. Part 74. Pursuant to these requirements, recipients must also comply with the applicable federal cost principles (OMB Circular A-122 codified at 2 C.F.R. Part 230), which specify which costs may be charged to federal grants, and the Single Audit Act Amendments of 1996, as well as OMB Circular A-133, which requires that grantees expending over \$500,000 in a year in federal awards must have a single, comprehensive audit of their programs for that year.¹

Generally, pursuant to the federal cost principles for costs to be charged to a federal grant, they must be reasonable for the performance of the award and allocable to that award.² A cost is allocable to an award in accordance with the benefits received by that award.³ The federal cost principles also prohibit the shifting of costs to other federal awards to either overcome funding deficiencies or to avoid restrictions imposed by law or by award terms.⁴ Furthermore, costs must be adequately documented.⁵

The uniform administrative requirements instruct recipients to charge to an award "only allowable costs resulting from obligations incurred during the funding period and any authorized pre-award costs."⁶ A grant recipient must also have in place a financial management system with records that adequately identify the source and application of federal funds, including accounting records supported by source documentation.⁷

Analysis of DAB's Decision to Deny S.A.G.E.'s Appeal

On appeal, S.A.G.E. offered various arguments challenging ACF's disallowance. S.A.G.E. contended that the \$22,941 was for "current obligations" or "continuing expenses." S.A.G.E. stated further that its lease, in particular, was not only a current obligation but a continuing one "not severable based upon a funding/budget period or the recipient's fiscal year." S.A.G.E. further claimed that nothing in the federal

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DAB Decision

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cost principles indicated that an advance payment is not an allowable cost. S.A.G.E. also explained that it had “requested an opinion from the auditor on the prepayment of the rent and it was advised that it was acceptable.”

The DAB rejected all of S.A.G.E.’s arguments and upheld ACF’s disallowance. The DAB found that, even though S.A.G.E.’s CBAE project continued beyond FY 2009, the uniform administrative requirements prohibited S.A.G.E. from charging to the FY 2009 award any costs resulting from obligations incurred after the FY 2009 award budget period ended on September 29, 2009. The DAB explained that the requirements only permit grantees to charge allowable costs resulting from obligations incurred during a funding period and any authorized pre-award costs. The DAB further noted that a “funding period” is defined as “the period of time when Federal funding is available for obligation by the recipient” and “obligations” are “amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the [grantee] during the same or a future period.”⁸ Moreover, the DAB observed that S.A.G.E. failed to provide any documentation or explanation supporting its contention that either the disallowed costs were incurred as current obligations or the payments were a necessary and reasonable cost of operating a CBAE program during FY 2009.

The DAB also found that S.A.G.E. failed to provide any documentation to rebut the audit report findings that the costs were not reasonable and allocable to the FY 2009 award. Following its prior decisions, the DAB determined that for a cost to be allocable to an award in accordance to the relative benefits received, the cost must not only relate to the award’s cost objectives, but also to its funding period. The DAB noted that S.A.G.E. had stated for the record that it was “unaware that prepaid expenses should not extend beyond the program period” and “thought that as long as it did not extend beyond the project period, these expenditures were allowable.”

Lessons Learned

- For multi-year awards that are funded in yearly grants, ensure that your organization understands the distinction between the specified annual budget period for each of the yearly grants and the project period for the entire award.
- Maintain a financial management system that adequately accounts for grant fund expenditures and ensures that funds are handled responsibly.
- For recurring costs paid in increments over multiple yearly budget periods (such as rent, insurance, and utilities payments), pay only those costs attributable to each budget period with funds from the grant for that period.
- Ensure that the information in grant reports for each of these periods accurately corresponds with the expenditures and activities for that period.
- Adequately document all grant award expenditures.
- Obtain funding source authorization before incurring pre-award costs.

(See endnotes on page 18)

FEATURED TOOLKIT

BYLAWS TOOLKIT

CAPLAW’s Bylaws Toolkit is just what you need to make your organization’s bylaws clear, effective, and up-to-date. The toolkit outlines key concepts for your agency’s bylaws, such as the authority of the Board of Directors, petitions for board representation, replacement of directors due to vacancies, quorum and voting policies, officers, conflicts of interest, and more. Updated information includes sample language reflecting: the requirements of the 2007 Head Start Reauthorization, evolving governance best practices, and CAPLAW’s experience reviewing CAA bylaws over the years.

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End Notes

Health Care Reform “Pay or Play” Q&A

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- if it is part of a controlled group, it will be considered a large employer if all the entities in the controlled group together have 50 or more employees and full-time equivalent employees (FTEs). 78 Fed. Reg. 218, 241 (to be codified at 26 C.F.R. § 54.4980H-1(a)(14)).
- Note that the term “dependent” is defined to mean an employee’s child who has not reached age 26. An employee’s spouse is not a dependent. 78 Fed. Reg. 218, 241 (to be codified at 26 C.F.R. § 54.4980H-1(a)(11)).
 - 26 U.S.C. § 5000A(f).
 - 26 U.S.C. § 36B(c)(2)(C)(ii).
 - 45 C.F.R. 156.145(a)(1)-(3).
 - Actuarial Value and Employer-Sponsored Insurance, ASPE Research Brief, U.S. Department of Health and Human Services (November 2011) (visited May 21, 2013) <http://aspe.hhs.gov/health/reports/2011/AV-ESI/rb.shtml>.
 - 26 U.S.C. § 36B(c)(2)(C)(i).
 - 78 Fed. Reg. 218, 252 (to be codified at 26 C.F.R. § 54.4980H-5(e)(2)).
 - 78 Fed. Reg. 218, 236.
 - Id.
 - 26 U.S.C. § 4980H(a) and 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-4).
 - 26 U.S.C. § 4980H(b) and 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-5).
 - 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-1(a)(22), (39) and (40) and -3(c)-(e)).
 - 42 U.S.C. §§ 18031 and 18041. Establishing Health Insurance Marketplaces: An Overview of State Efforts (The Henry J. Kaiser Family Foundation, May 2, 2013) (visited May 21, 2013) <http://kff.org/health-reform/issue-brief/establishing-health-insurance-exchanges-an-overview-of/>.
 - 26 U.S.C. § 36B(a) and (c); 26 U.S.C. § 5000A(f)(1)(A)(ii); and 42 U.S.C. § 18071(b).
 - Affordable Insurance Exchanges: Choices, Competition and Clout for Small Businesses (Healthcare.gov, visited May 21, 2013) <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011c.html>. 42 U.S.C. §§ 18031 and 18041.
 - See 26 U.S.C. § 4980H(d); 78 Fed. Reg. 218, 231; and Internal Revenue Service, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, Q&A 16 (Dec. 28, 2012) (visited May 21, 2013) <http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>.
 - 26 U.S.C. §§ 6055-6056.
 - See 45 C.F.R. § 155.410(b).
 - 2 C.F.R. Part 230, App. B, ¶18.g. (OMB Circular A-122, which applies to nonprofit grantees); see similar provision in 2 C.F.R. Part 225, App. B, ¶18.d. (OMB Circular A-87, which applies to state and local governmental grantees).
 - 2 CFR Part 230, App. B, ¶16 (OMB Circular A-122, which applies to nonprofit grantees); see similar provision in 2 CFR Part 225, App. B, ¶16 (OMB A-87, which applies to state and local government grantees).
 - 2 CFR Part 230, ¶147a (OMB Circular A-122, applies to nonprofits); see also 2 CFR Part 225, App. B, ¶140 (OMB Circular A-87, applies to state and local governments).
 - 2 C.F.R. Part 230, App. A.3.; 2 C.F.R. Part 225, App. A.3.

Determining Whether Your Organization is a Large Employer

- 78 Fed. Reg. 218, 242 (to be codified at 26 C.F.R. § 54.4980H-2(b)(1)).
- 78 Fed. Reg. 218, 243 (to be codified at 26 C.F.R. § 54.4980H-2(c)).
- 78 Fed. Reg. 218, 238.
- 78 Fed. Reg. 218, 243 (to be codified at 26 C.F.R. § 54.4980H-1(a)(34) and -2(b)(2)).

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- 45 C.F.R. §§ 74.26(a); 74.27(a).
- 2 C.F.R. Part 230, Appendix A, A.2.a.
- 2 C.F.R. Part 230, Appendix A, A.4.a.
- 2 C.F.R. Part 230, Appendix A, A.4.b.
- 2 C.F.R. Part 230, Appendix A, A.2.g, A.4.a.
- 45 C.F.R. § 74.28.
- 45 C.F.R. § 74.21(b)(2), (b)(7).
- 45 C.F.R. § 74.2

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