

Audits and Audit Resolution

SUBJECT: Audits and Audit Resolution

REFERENCE: Workforce Investment Act of 1998, Section 184; 20 CFR: 667.200, 667.220, 667.500, 667.505, 667.510, 667.720; 667.730; 29 CFR 97.26 and 29 CFR 95.26; Single Audit Act Amendments of 1996; OMB Circular A-133; Government Auditing Standards (the Yellow Book); Federal Register/Vol. 68, No. 124/Friday, June 27, 2003, P. 38401-38402; One-Stop Comprehensive Financial Management Technical Assistance Guide and State Workforce Investment Plan.

BACKGROUND: All governmental and non-profit organizations must follow the audit requirements of OMB Circular A-133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations. Commercial organizations which are subrecipients under WIA Title I and which expend more than the minimum level specified in OMB Circular A-133 (\$500,000 for fiscal years ending after December 31, 2003) must have either an organization-wide audit conducted in accordance with A-133 or a program specific financial and compliance audit.

POLICY: To ensure that all Federal funds are expended in accordance with applicable laws and regulations, audit standards have been established.

General

- Threshold and Time Frame

Each non-Federal entity that expends a total amount of Federal awards equal to or in excess of \$500,000 in any fiscal year shall have either a single audit or a program-specific audit made for such fiscal year in accordance with this policy unless they qualify for the limited exceptions under the Single Audit Act Amendments. These exceptions include:

1. A state or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. Audits conducted biennially shall cover both years within the biennial period.
2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially. Audits conducted biennially shall cover both years within the biennial period.

In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds.

- Government Auditing Standards (Yellow Book)

The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

- One-Stop System Environment

Since there are multiple funding streams within the One-Stop system, it will be necessary for each recipient of Federal funds to be responsible for complying with OMB Circular A-133 and the Single Audit Act as amended (Single Audit Act Amendments of 1996). Each entity that provided funds will be responsible for resolving any audit findings related to its individual programs.

Auditor Selection

In arranging for audit services, the procurement requirements of State policy shall be followed. In requesting proposals for audit services, the objectives and scope of the audit must be made clear.

Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

Auditor Responsibilities

The auditor shall:

- Determine whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles;
- Determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole;
- With respect to internal controls pertaining to the compliance requirements for each major program - obtain an understanding of such internal controls, assess control risk, and perform tests of controls unless the controls are deemed to be ineffective; and
- Determine whether the non-Federal entity has complied with the provisions of laws, regulations, and contracts or grants pertaining to Federal awards that have a direct and material effect on each major program.

State and Pass-Through Entities Responsibilities

Each pass-through entity shall:

- Provide such subrecipient the program names (and any identifying numbers) from which such assistance is derived, and the Federal requirements which govern the use of such awards;
- Monitor the subrecipient's use of Federal awards through site visits, limited scope audits, or other means;
- Review the audit of a subrecipient as necessary to determine whether prompt and appropriate corrective action has been taken with respect to audit findings pertaining to Federal awards provided to the subrecipient; and
- Require each of its subrecipients of Federal awards to permit, as a condition of receiving Federal awards, the independent auditor of the pass-through entity to have such access to the subrecipient's records and financial statements as may be necessary.

Auditor's Report

The auditor's report shall state that the audit was conducted in accordance with OMB Circular A-133 and include the following:

- An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.
- A report on internal control related to the financial statements and major programs.
- A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial

statements.

- A summary of the auditor's results which shall include:
 1. The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
 2. Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
 3. A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
 4. Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
 5. The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
 6. A statement as to whether the audit disclosed any audit findings which the auditor is required to report as Audit Findings.
 7. An identification of major programs.
 8. The dollar threshold used to distinguish between Type A and Type B programs.
 9. A statement as to whether the auditee qualified as a low-risk auditee.
- Findings relating to the financial statements which are required to be reported in accordance with generally accepted government auditing standards.
- Findings and questioned costs for Federal awards which shall include audit findings.
 1. Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding.
 2. Audit findings which relate to both the financial statements and Federal awards should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

Submission of Audit Reports

The audit [which includes funds awarded by the Nebraska Department of Labor] shall be completed and the data collection form and reporting package as identified in OMB Circular A-133 shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period (unless a longer period is agreed to in advance by the cognizant or oversight agency).

Submit to the Federal clearinghouse designated by OMB and to:

Office of Finance and Human Relations
Nebraska Workforce Development-Department of Labor
550 South 16th
P.O. Box 94600
Lincoln, NE 68509

The address of the Federal clearinghouse currently designated by OMB is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

Resolution of Findings

- Subrecipient-Level Findings

The Office of Finance and Human Relations is responsible for resolving findings of local area grantees and any other direct subrecipients (such as project operators under the Governor's set-aside funds) that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A-133 audits) of subrecipients. Appropriate corrective action shall be taken within six months after receipt of any audit report reflecting noncompliance with Federal laws and regulations. The audit resolution, debt collection and appeal procedures used for other Federal grant programs shall also be used for WIA Title I findings. Local area grantees are responsible for resolving audits of their service providers and direct subrecipients.

Initial Determination

The Initial Determination is a preliminary decision on whether to allow or disallow questioned costs and resolve any non-monetary (administrative) findings. It offers the subrecipient an opportunity for informal resolution, not a formal hearing.

The Initial Determination, which addresses questioned costs and administrative findings, should be sent to the subrecipient within a reasonable time after the end of the subrecipient's comment period. The Initial Determination should be sent U.S. Certified Mail, return receipt requested.

Informal Resolution Period

During this phase, the subrecipient has an opportunity to present new evidence, documentation, and an explanation to modify the decision by the awarding agency. The subrecipient has an opportunity to agree to corrective action before the awarding agency initiates sanctions or remedial actions. Occasionally, the subrecipient will admit to the non-allowability of a questioned cost and make repayment. In such cases, the amount is disallowed in the Final Determination but is not subject to debt collection. The terms of repayment may be negotiated and may also be included in the Final Determination.

Final Determination

The Final Determination should be sent to the subrecipient within a reasonable time (not more than six months) after the awarding agency receives the final audit report. The Final Determination should be sent by U.S. Certified Mail, return receipt requested.

The Final Determination should:

1. Reference the Initial Determination.
2. State the awarding agency's final decision to disallow any costs, listing each disallowed cost specifically and noting the reasons for each disallowance.
3. Identify the questioned costs in the audit report that have been allowed by the awarding agency and the basis for the allowance of the costs.
4. Demand repayment of the disallowed costs.
5. Describe debt collection actions and other sanctions that the awarding agency may impose if repayment is not made.
6. Inform the subrecipient of its right to appeal.
7. Restate the status of each administrative finding.

When a cost is disallowed in the Final Determination, a debt is established. However, if the subrecipient appeals, no further collection action can be taken pending the outcome of the appeal.

Post Audit Follow-Up on Uncorrected Findings

In some cases, administrative findings may not be corrected within the six-month time frame allowed. To ensure that these findings are fully corrected, proper controls must be implemented that will track resolution during the post-Final Determination period. Follow-up shall require auditees to report, at least quarterly, the status of uncorrected audit findings and corrective action.

Follow-up tracking systems shall include contact information that identifies the person responsible for ensuring correction of the reported deficiencies and variances, and shall require at least quarterly updates of progress toward achieving correction.

- State and other Direct Recipient Level Findings

The Secretary of Labor is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A-133 audits.

The Secretary uses the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A-133, and Grant Officer Resolution provisions of 667.510, as appropriate.

Under Section 184(d)(2), the State may request that the Grant Officer waive the liability for a debt under the circumstances listed in 667.720(c).

A direct grantee may also request approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or forego. The recipient's request must include a description and an assessment of all actions taken by the subrecipients to collect the misspent funds.

A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at 667.800. However, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

- Stand-In Costs

Stand-in costs are non-Federal costs that may be substituted for disallowed grant costs when certain conditions are met. The application of stand-in costs occurs at the audit resolution stage. If an auditee agrees that an auditor's questioned cost is unallowable or decides not to contest the finding and wishes to propose the use of stand-in costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report or other document by which the auditee provides its comments to the resolution agency.

Stand-in costs must meet the following criteria:

1. To be considered, proposed stand-in costs shall have been actually incurred allowable grant costs that have not been charged to the Employment and Training Administration-funded program, included within the scope of the audit and accounted for in the auditee's financial system. Cash match in excess of the required match may also be considered for use as stand-in costs.
2. To be accepted, stand-in costs must come from the same appropriation year as the costs that they are proposed to replace, and they must not cause a violation of the administrative or other cost limitations.

Certain costs, including in-kind contributions, are not considered unpaid Employment and Training Administration program liabilities, but rather as in-kind match; therefore, they cannot be used as stand-in costs because they cannot be charged to the Federal grant. Examples of other costs that are not stand-in costs include: uncompensated overtime; unbilled premises costs associated with fully depreciated publicly owned buildings; allocated costs derived from an improper allocation methodology; discounts, refunds, and rebates; and any State share of the cost of State or community college tuition.

Retention of Records

Auditees shall keep one copy of the data collection form and one copy of the reporting package on file for three years from the date of submission to the Federal clearinghouse. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

All books, documents, records, and work papers associated with the audit shall be retained for a minimum of three (3) years after the issuance of the audit report. Records must be retained beyond the prescribed period if any litigation or audit has begun, or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records must be retained until resolution of the litigation, audit, or claim or until the end of the regular three-year record retention period, whichever is later. Records must be retained beyond the prescribed period in the event of delays or failure to obtain or resolve a required and appropriate audit. Failure to obtain an audit extends the record retention requirement indefinitely. A delay in obtaining an audit or in resolving audit findings extends the record retention period until all audit requirements have been satisfied and all findings have been resolved to the satisfaction of the awarding agency.

Upon request, all grantees shall make available to the State, its designated agents, federal and/or cognizant agency access to all program documents and working papers. Access includes the right of designated agents to obtain copies of working papers, as is reasonable and necessary.

Cost of Audits

- Allowable Costs

The cost of audits made in accordance with OMB Circular A-133 is allowable under WIA and is considered an administrative function. The local Workforce Investment Area grantees may pay for audits with administrative funds, or contingent upon available funding, request reimbursement from the Office of Workforce Services for the proportionate share of WIA audit costs of a single audit.

- Unallowable Costs

The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) per year is unallowable. However, a pass-through entity may charge for the cost of limited scope audits to monitor its subrecipients provided the subrecipient does not have a single audit.

A non-Federal entity is prohibited from charging to any Federal award more than a reasonably proportionate share of the cost of any such audit. The percentage of the cost of audits charged to Federal awards shall generally not exceed the ratio of total Federal awards expended by such non-Federal entity during the applicable fiscal year or years, to such non-Federal entity's total expenditures during such fiscal year or years. However, if there is documentation demonstrating a higher actual cost of auditing the Federal awards portion, then a greater percentage may be charged, as appropriate.