

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Department of Administration TITLE NUMBER: 148

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 18

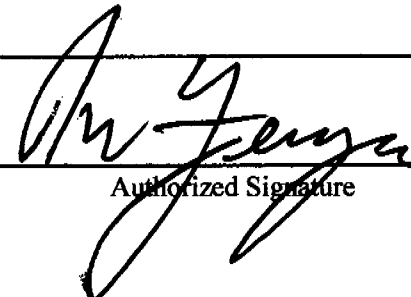
TITLE OF RULE BEING PROPOSED: Accountability Requirements for State Funds and
Grants

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2616

SECTION 64-2-1(a), PASSED ON March 8, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 1, 2007



Authorized Signature

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

FILED

**SERIES 18
Accountability Requirements for State Funds and Grants**

2007 APR -4 PM 3: 19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-18-1. General.

1.1. Scope. -- This rule establishes standards and procedures for recipients of state funds and grants to account for the manner in which those funds are spent.

1.2. Authority. -- W. Va. Code §12-4-14.

1.3. Filing Date. --

1.4. Effective Date. -- May 1, 2007

§148-18-2. Definitions

2.1. "Agreed upon procedures engagement" means an agreement between a grantee and an independent certified public accountant to prepare a report required under this section, where the grantor who awarded the state grant(s) is required to agree to the procedures performed in addition to the grantee and the independent certified public accountant performing such engagement.

2.2 "Examination engagement" means an agreement between a grantee and an independent certified public accountant to prepare a report required under this section, where the independent certified public accountant makes all judgements on the extent of testing necessary in order for said independent certified public accountant to render his or her opinion as to whether the state grants were spent as intended.

2.3 "Grantee" means a person who is a recipient of a state grant.

2.4 "Grantor" means a state spending unit awarding a state grant.

2.5 "Person" includes any corporation, partnership, association, individual or other legal entity. The term "person" does not include a state

spending unit or a local government as defined in section one-a, article nine, chapter six of the Code of West Virginia.

2.6 "Receipts" means the amount of state grants actually received by a grantee within a State fiscal year.

2.7 "Report" means an agreement between a grantee and an independent certified public accountant to test whether state grants were spent as intended. The term "report" does not mean a full-scope audit or review of the grantee. Reports shall comply with Compliance Attestation Standards established by the AICPA's (American Institute of Certified Public Accountants) Statements on Standards for Attestation Engagements to test whether state grants were spent for the intended purpose. Under specified circumstances, described in section 4 of this rule, certain types of independent audits may be substituted for the required report.

2.8 "State grant" means funding provided by a state spending unit, regardless of the original source of the funds, to a person upon application for a specific purpose. With regard to the amount of state grant funds which require compliance with this section, the receipt or disbursement of state grants means the amount of state grant funds actually received by a grantee within a State fiscal year, and does not mean the total amount of state grants awarded but not yet paid out to a grantee within a State fiscal year. The term "state grant" does not include:

(A) payments for goods and services purchased by a state spending unit;

(B) compensation to state employees and public officials;

(C) reimbursements to state employees and public officials for travel or incidental expenses;

(D) grants of student aid;

(E) government transfer payments;

(F) direct benefits provided under state insurance and welfare programs;

(G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds, and where the receipts for the expenditures evidence that the person has actually expended the funds for a good or service and not merely taken possession of the good or received the service: Provided, That notwithstanding the provisions of this subdivision, funding provided pursuant to section twelve, article two, chapter five-b is included within the term "state grant";

(H) retirement benefits; and

(I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U. S. C. 7501, et seq.

(J) formula distributions to volunteer and part-volunteer fire departments made pursuant to W. Va. Code §33-3-14d, §33-3-33, and §33-12C-7.

§148-18-3. Reports of the Disbursement of State Grants

3.1. Any grantee who receives one or more state grants totaling \$50,000 or more in the aggregate in a state fiscal year (ending on June 30th) shall file with the grantor a report of how the state grant funds were disbursed.

3.2. A grantee may satisfy the report requirement of subsection 3.1. of this rule through the performance of either an agreed-upon procedures engagement or an examination engagement conducted by an independent certified public accountant (CPA) in accordance with Compliance Attestation Standards established by the AICPA's Statements on Standards for Attestation Engagements. The scope of the report is limited to showing that state grants were spent for the intended purpose.

3.3. Reports required by this section shall contain at least the following:

3.3.1. Identifying State grants information.

3.3.2. Amount of award.

3.3.3. Receipts of funds

3.3.4. Expenditures of funds

3.3.5. Time period being reported on.

3.4. The grantee may use funds from state grants to pay for the required report if the applicable grant provisions allow the expenditure and if the expenditure is appropriately budgeted and allocated to the appropriate funding source(s) by the grantee.

3.5. If a grantee receives more than one state grant for the applicable reporting period, the grantee may comply with this section by filing one report that collectively encompasses all state grants received during the applicable reporting period, by filing separate reports for each state grant received during the applicable reporting period, or any combination thereof.

3.6. The grantee shall submit the required report within two years after the end of the fiscal year in which the grantor disbursed the state grants to the grantee. If the grantee's fiscal year end is different from the State's fiscal year end (June 30), the grantee shall file the report within two years after the end of its fiscal year following the state fiscal year in which the funds were disbursed.

3.7. Any report submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with the provisions of the WV Code §12-4-14.

3.8. At the option of the grantee, the report(s) may be included with the grantee's annual financial statements which are audited by an independent certified public accountant.

§148-18-4. Audit Reports for funds.

4.1. In lieu of the required report, the grantee may submit an audit performed by an

independent CPA that complies with the Office of Management and Budget's (OMB) Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) which includes a schedule of state grant receipts and expenditures and a related auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole.

4.2. In lieu of the required report, the grantee may submit a financial audit, performed by an independent CPA, which complies with Government Auditing Standards issued by the Comptroller General of the United States if the audit includes a schedule of state grant receipts and expenditures and a related auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole.

4.3. Any independent audit report prepared in accordance with Government Auditing Standards or OMB Circular A-133 and submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with the provisions of the WV Code §12-4-14.

4.4. All audit work papers shall be retained by the independent certified public accountant performing such audit for a period of five (5) years following the date of issuance of the audit report.

§148-18-5. Sworn Statements of Expenditures made under Grants.

5.1. Any grantee who: 1) receives one or more state grants in an aggregate amount of less than \$50,000; 2) is not required to file a report because the grantor causes an audit of the grant funds to be conducted by an independent certified public accountant using Government Auditing Standards and a copy of the audit is available for public inspection; or 3) is not required to file a report because an audit complying with the Office of Management and Budget Circular A-133 is substituted for the report, shall file with each grantor a sworn statement of expenditures, notarized by a notary public in good standing with the Secretary of State, for all applicable state grants. The form shall indicate that the grantee has sworn to or affirmed the truthfulness and

completeness of the information contained in the statement of expenditures.

5.2. The sworn statement of expenditures may be in a form approved by the grantee or the grantor, the final decision of which rests with the grantor.

5.3. A sworn statement of expenditures shall include at least:

5.3.1. Name, address, telephone number and federal employer identification number (FEIN) of the grantee.

5.3.2. Identifying information about the state grant (e.g. grant number).

5.3.3. Period(s) covered.

5.3.4. Total amount of the award.

5.3.5. Funds received under the grant.

5.3.6. A listing of expenditures to include, at a minimum, the level of detail (categories, line items, cost centers, etc.) as contained within the related grant budget.

5.3.7. Ending balance (remaining balance of funds associated with the state grant), if applicable.

5.4. The sworn statement shall be in the following form:

"This is to certify that I have reviewed the enclosed Statement of Grant Receipts and Expenditures submitted herewith and, to the best of my knowledge and belief, said statement represents all financial activities related to the receipt, use and expenditure of funds granted by the [GRANTOR] to [GRANTEE] and that the expenditures reported were for the purposes intended and in compliance with applicable laws, regulations and the terms and conditions of the grant documents. The Statement of Grant Receipts and Expenditures is presented on the [ACCRUAL / CASH] basis of accounting and is supported by our financial records and related documentation."

5.5. A senior representative of the grantee

who possess the authority to bind the grantee (e.g. Chief Executive Officer, Controller, Director of Finance, Chief Financial Officer, etc.) must sign the statement and provide his or her printed name, title and date of signature, and shall be in a form approved by the grantor. The senior representative of the grantee shall swear or affirm that the amounts of disbursements shown on the sworn statement were expended as prescribed by the applicable West Virginia Code. The signature attesting to the sworn statements shall be notarized by a certified notary public in good standing with the Secretary of State.

5.6. The grantee shall submit the sworn statement of expenditures within two years after the end of the fiscal year in which the grantor disbursed state grants to the grantee. If the grantee's fiscal year end is different from the State's fiscal year end (June 30), the grantee shall file the report within two years after the end of its fiscal year following the state fiscal year in which the funds were disbursed.

5.7. Any sworn statement of expenditures submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with WV Code §12-4-14.

§148-18-6. Debarment.

6.1. Any grantee failing to file a required report or sworn statement of expenditures for state grants disbursed after July 1, 2003, within the required time is barred from subsequently receiving further state grants until the grantee complies with its reporting responsibilities and is otherwise in compliance with the provisions of this rule.

6.2. The grantor has primary responsibility for determining if the grantee has filed a required report or sworn statement of expenditures, the date the report or statement was filed, and if the report or statement meets all Statutory and Administrative requirements. Proof of grounds for debarment must be clear and convincing.

6.3. The grantor shall administer the debarment process.

6.3.1. Once the grantor determines that a grantee should be debarred, the grantor shall notify the grantee by certified mail, return receipt requested, of the reasons and the causes relied upon for the proposed debarment.

6.3.2. If the grantee disputes the proposed debarment, it must submit its argument to the grantor in writing within 30 calendar days after receipt of the notice.

6.3.3. If a grantee contests the debarment decision, the grantor shall decide the matter in accordance with the provisions of W.Va. Code §29A-5-1 *et seq.*

6.4. The grantor is responsible for notifying the Legislative Auditor when a grantee has been debarred from receiving state grants.

6.5. A grantee's failure to satisfy its reporting responsibilities under WV Code §12-4-14 with regard to one state grant precludes the grantee from receiving other state grants, from either the same state spending unit or from a different one.

6.6. The reporting requirements and related penalty provisions associated with WV Code §12-4-14 do not affect a grantee's ability to apply for federal financial assistance or receive other types of funding, such as those referenced within Section 2.4 of this rule.

6.7. Before disbursing a state grant, the grantor shall first confirm with the Legislative Auditor that the person seeking the State grants has not been debarred.

§148-18-7. Grantor Reporting Requirements.

7.1. Any grantor shall, in a manner designated by the Legislative Auditor, provide information identified in §12-4-14(e) of the WV Code.

7.2. The grantor shall notify each grantee of the reporting requirements set forth in this section.

7.2.1. For state grants that have already been fully negotiated and signed by the

responsible parties, the grantor may satisfy the notification requirement through transmittal of an ancillary communication to the grantee.

7.2.2. For state grants that have yet to be fully negotiated and signed by the responsible parties, the grantor shall incorporate a clause within its formal grant agreement, contractual document or grant award notification letter to convey the reporting requirements under WV Code §12-4-14.

7.3. A grantor shall provide written notice to the Legislative Auditor of any grantee failing to file a required report or sworn statement of expenditures for a state grant disbursed after July 1, 2003, within the required time.

7.4. The grantor's obligation to report noncompliant grantees to the Legislative Auditor begins 180 days after the effective date of this rule.

7.5. If any report or sworn statement of expenditures submitted pursuant to this section provides evidence of a reportable condition, significant deficiency, or violation, including deficiencies in internal controls; illegal acts; violation of a provision of a contract or grant agreement; errors; abuse; or any other contingency or matter that could negatively affect or have a negative result on administration of the state grant or related program, the grantor shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor within thirty days of receipt.

7.7. The grantor shall maintain copies of reports and sworn statements of expenditures for public inspection as well as for use in internal audits, performance reviews or other monitoring efforts.

§148-18-8. Verification Process.

8.1. Before awarding a state grant, a grantor shall take reasonable actions to verify that the person seeking the state grant is not barred from receiving said grant. The verification process shall include one of the following:

8.1.1. A clause within the formal grant

agreement (or other contractual) document, signed by a senior representative of the person seeking the grant before a notary public in good standing with the Secretary of State. "Under penalty of law for false swearing (WV Code §61-5-3), [PERSON] certifies that by signing this grant agreement on the signature page that [PERSON] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.1.2. A separate notarized sworn statement of compliance from the person seeking the state grant stating that the person has filed all "reports" and sworn statements of expenditures pursuant to the requirements of WV Code §12-4-14. A senior representative of the person must sign the notarized statement and provide his or her printed name, title and date of signature. The sworn statement shall include the following clause: "Under penalty of law for false swearing (WV Code §61-5-3), [PERSON] certifies that by signing this sworn statement [PERSON] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.2. In addition to verification obtained directly from the person seeking the grant, the grantor shall obtain confirmation from the Legislative Auditor that the person seeking the state grant has not been debarred or otherwise failed to file a report or sworn statement of expenditures. The grantor may satisfy this requirement by accessing the computerized database as maintained by the Legislative Auditor.