



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Auditor

RULE TYPE: Legislative

TITLE-SERIES: 155-09

RULE NAME: Accountability Requirements for State
Funds and Grants

CITE AUTHORITY: W. Va. Code 12-4-14

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Vincent J Smith -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 155
LEGISLATIVE RULE
WEST VIRGINIA STATE AUDITOR**

**SERIES 9
ACCOUNTABILITY REQUIREMENTS FOR STATE FUNDS AND GRANTS**

§155-9-1. 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, in addition to outlining procedures for the stop payment of grant awards, state grant debarment process, grant fund recovery, and conflict of interest policies.

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

1.3. Filing Date. -- ~~May 4, 2022.~~

1.4. Effective Date. -- ~~August 1, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~August 1, 2027~~ August 1, 2032.

§155-9-2. Definitions.

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

2.2. "Examination engagement" means an agreement between a grantee or subgrantee 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. "Person" includes any spending unit, local government, corporation, partnership, association, individual, or other legal entity.

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

2.5. "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 W.Va. Code § 5B-2-12 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., and the funds required to match the federal funds;

(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— or money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code;~~;~~

(K) money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of the West Virginia Code; and

(L) grants made by the West Virginia Water Development Authority.

§155-9-3. 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 and the State Auditor 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 American Institute of Certified Public Accountant’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. The amount of award;

3.3.3. Receipts of funds;

3.3.4. Expenditures of funds;

3.3.5. The 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 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:

3.5.1. Filing one report that collectively encompasses all state grants received during the applicable reporting period; or

3.5.2. Filing separate reports for each state grant received during the applicable reporting period; or

3.5.3. Filing 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 is acceptable in its current form only if it otherwise complies with the provisions of the W. Va. Code §12-4-14.

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

3.9. A grantor may accept reports required under this section from a grantee or subgrantee and submit them to the State Auditor on behalf of the grantee or subgrantee.

§155-9-4. 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) or 2 CFR part 200, subpart F, 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, OMB Circular A-133, or 2 CFR 200 subpart F, 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 W. Va.

Code §12-4-14.

4.4. The independent CPA shall retain all audit work papers for a period of five (5) years following the date of issuance of the audit report.

§155-9-5. 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 or 2 CFR 200 subpart F is substituted for the report, shall file with each grantor and the State Auditor 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 grantor. The grantor shall submit the form for final approval which rests with the State Auditor.

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

5.3.1. The 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. The period or periods covered;

5.3.4. Total amount of the award;

5.3.5. The 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; and

5.3.7. The 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 and, to the best of my knowledge and belief, the 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, 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.

5.8. A grantor may accept sworn statements of expenditures required under this section from a grantee or subgrantee and submit them to the State Auditor on behalf of the grantee or subgrantee.

§155-9-6. Debarment.

6.1. Any grantee failing to file a required report or sworn statement of expenditures for state grants 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 State Auditor shall administer the debarment process.

6.3.1. Once the grantor determines that a grantee should be debarred, the State Auditor 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 State Auditor in writing within 30 calendar days after receipt of the notice.

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

6.4. The State Auditor shall notify the State Treasurer and update the West Virginia debarred list when her or she has debarred a grantee.

6.5. A grantee's failure to satisfy its reporting responsibilities under W. Va. 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 W. Va. Code §12-4-14 do not affect a grantee's ability to apply for federal financial assistance or receive other types of funding.

6.7. Before disbursing a state grant, the grantor shall first confirm with the State Auditor that the person

seeking the State grants has not been debarred.

§155-9-7. Grantor Reporting Requirements.

7.1. Any grantor shall, in a manner designated by the State Auditor, provide information identified in §12-4-14 of the W. Va. 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 W. Va. Code §12-4-14.

7.3. A grantor shall provide written notice to the State Auditor of any grantee failing to file a required report or sworn statement of expenditures for a state grant within the required time.

7.4. 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 State Auditor within thirty days of receipt.

7.5. The grantor shall maintain for a period of ten (10) years any 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.

§155-9-8. Verification Process.

8.1. Before awarding a state grant, a grantor shall verify that the person seeking the state grant is not barred from receiving the 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 (W. Va. 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 W. Va. Code §12-4-14."; and

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 W. Va. Code §12-4-14. A senior representative of the person shall 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 (W. Va. 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 W. Va. 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 State 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 maintained by the State Auditor.

§155-9-9. Stop Payment Procedures.

9.1. Grantor agencies or the State Auditor shall issue stop payment orders if a grantee or subgrantee fails to file required reports, fails to comply with one or more terms of the grant or subgrant, or commits violations of law. Grantor agencies or the State Auditor may also issue stop payment orders as the result of an audit or investigation or if applicable reporting or record keeping provisions for state grants are delinquent or not in compliance with West Virginia code.

9.2. If a grantor identifies a payment to be stopped, the grantor shall prepare a stop payment order and forward a copy to the grantee and/or subgrantee and the State Auditor.

9.3. If the State Auditor identifies a payment to be stopped, the State Auditor shall prepare a stop payment order and forward a copy to the grantee and/or subgrantee and the grantor agency.

9.4. The stop payment order shall be in writing, sent by certified mail, return receipt requested, to the grantee or subgrantee's address on record in the statewide accounting system and shall contain the following information:

9.4.1. The name of the grantor agency;

9.4.2. The name and address of the grantee and/or subgrantee;

9.4.3. The reason or reasons for the stop payment order, including identifying the specific grant award or awards for which required reports were not filed;

9.4.4. If applicable, the specific remedies for the grantee and/or subgrantee to cure noncompliance so that the stop payment order may be lifted.

9.5. The State Auditor shall send the completed stop payment order documentation to noncompliant grantees and/or subgrantees no later than 10 calendar days after identification of a payment to be stopped. A grantor agency or the State Auditor may cease funding or stop the disbursement of grant funds to a grantee and/or subgrantee before receipt of stop payment order documentation by the grantee and/or subgrantee.

9.6. With the approval of a grantor agency, the State Auditor may temporarily or permanently lift a stop payment order or permit a grantee and/or subgrantee to receive limited funding if in the best interests of the state. The State Auditor may prescribe additional oversight or monitoring procedures for a grantee and/or subgrantee at his or her discretion if a stop payment order is temporarily or permanently lifted. Situations where a stop payment order may be temporarily or permanently lifted may include, but are not limited to:

9.6.1. Cessation of funding would present imminent threats to life and safety of state residents, visitors, or the general public;

9.6.2. States of emergencies;

9.6.3. Cessation of funding would present threats to West Virginia environment or wildlife;

~~9.6.3.~~ 9.6.4. The safety, education, and well-being of minor children; or

~~9.6.4.~~ 9.6.5. Maintenance and repairs of state preservation or historical sites where the cessation of funding would affect the safety or historic preservation of the structure or site.

9.7. If the grantee or subgrantee disputes the stop payment order, it must submit its argument to the State Auditor in writing within 30 calendar days after receipt of the notice.

9.8. If a grantee or subgrantee contests the stop payment order decision, the State Auditor shall decide the matter in accordance with the provisions of W. Va. Code §29A-5-1 et seq.

9.9. If a stop payment order permits a grantee or subgrantee to cure deficiencies identified in a stop payment order, the grantee or subgrantee shall send all required documentation, reports, or information to the State Auditor in writing.

9.10. The State Auditor shall lift a stop payment order in writing after considering whether lifting the stop payment order is in the best interests of the state. Considerations may include, but are not limited to:

9.10.1. Whether the grantee and/or the subgrantee have complied with applicable reporting requirements as prescribed in West Virginia Code;

9.10.2. Whether the grantee and/or the subgrantee's record keeping procedures and internal control policies are sufficient; and

9.10.3. The results of any pending audit or investigation.

§155-9-10. Grant Funds Recovery Procedures.

10.1. If a grantor agency believes grant funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at least one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery action.

10.2. If a grantor agency determines that certain grant funds are to be recovered, then, prior to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the funds a written notice via certified mail, return receipt requested, of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specified facts which permit recovery.

10.3. A grantee has 35 calendar days from the receipt of the notice required in subsection 10.2 of this rule to return the grant funds or request a hearing in writing to show why recovery is not justified or proper.

10.4. If a grantee requests a hearing pursuant to subsection 10.3 of this rule, then:

10.4.1. The hearing shall be conducted under W.Va. Code §29A-5-1, *et seq.* and be presided over by the grantor agency head or their designee.

10.4.2. The grantor agency shall hold the hearing at which the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted, and,

10.4.3. After the conclusion of the hearing, the grantor agency shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of the code and send a copy of the order to the grantee and the State Auditor.

10.4.4. If a grantee requests a hearing pursuant to Subsection 10.3 of this rule then the grantor agency may not take any action of recovery until at least 35 calendar days after the grantor agency has issued a final recovery order pursuant to the requirements of Subsection 10.4 of this rule.

10.5. If a grantee does not return the grant funds or request a hearing as permitted in Subsection 10.3 of this rule, then the grantor agency may proceed with recovery of the grant funds identified in the notice issued pursuant to the requirements of Subsection 10.2 of this rule at any time after the expiration of the 35 calendar day request period established in Subsection 10.3 of this rule.

10.6. Any grant funds which have been misspent or are being improperly held are subject to recovery by the grantor agency which made the grant. The grantor agency shall take affirmative and timely action to recover all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds, the grantor agency making the grant may use any one or a combination of the following:

10.6.1. Offset the amounts against existing grants or future grants to be made by the grantor agency making the recovery;

10.6.2. Request offsets of the amounts from existing grants or future grants to be made by other grantor agencies;

10.6.3. Initiate any debt collection method authorized by law against any private person, business, or entity;

10.6.4. Remove the grantee from the grantor agency's programs and debar the grantee's participation in future grant programs for a period not to exceed three years or until removed from the debarred list; or

10.6.5. Request further action under Subsection 10.7 of this rule to recover grant funds and otherwise enforce all applicable laws.

10.7. The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any grant funds which have been misapplied or are being improperly held and has all the powers of collection established by law in addition to any other powers authorized by law, including, without limitation, to file lawsuits to recover grant funds.

10.8. All grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining at grant completion or termination, shall be deposited in a special revenue fund in the State Treasury known as the "Grant Recovery Fund".

§155-9-11. Prohibited Political Activity.

11.1. Grantors, grantees, subgrantees, and their personnel shall not knowingly use grant funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in a prohibited political activity.

11.2. Grantors, grantees, subgrantees, and personnel thereof shall not be knowingly compensated from grant funds for time spent engaging in a prohibited political activity.

11.3. Nothing in this rule shall prohibit any organization described in 26 U.S.C. §501(c)(3) or 26 U.S.C. §501(c)(4) receiving a grant from the state in engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a grant from the state or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

11.4. A grantor, grantee, subgrantee, or their personnel who knowingly uses grant funds for prohibited political activity in violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

§155-9-12. Chief Accountability Officer

12.1. Each state grantor agency shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and shall be responsible for the state agency's implementation of and compliance with the law, rules, and terms of grants. Such position may be held concurrently with any other designated position.

§155-9-13. Conflict of Interest Provisions

13.1. Each state grantor agency shall develop state grant conflict of interest policies. The grantor shall file conflict of interest policies in writing with the State Auditor.

13.2. If a state grantor agency revises its state grant conflict of interest policies, it shall file updated policies with the State Auditor within 15 business days of approval of the revisions.

13.3. State grant conflict of interest policies shall include provisions addressing conflicts of interests between the grant applicant and the grantor agencies.

13.4. Grantees and subgrantees shall disclose in writing to the grantor agency any potential conflicts of interest.

13.5. Conflict of interest policies shall apply to personnel at a grantor agency who evaluate, score, assess, or participate in the awarding of grants. The personnel shall disclose any conflict of interests in writing and recuse themselves from the grant award process.

13.6. Conflict of interest policies should apply to personnel at a grantor agency who evaluate, score, assess, or participate in the awarding of grant funds to subgrantees. Such personnel should disclose any conflict of interests in writing and recuse themselves from the sub-grant award process.

13.7. All conflict of interest policies, disclosures, or other documentation are subject to inspection by the State Auditor or Legislative Auditor.

§155-9-14. Legislative Reporting.

14.1. Effective on or before December 31, 2022, and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the

efficiencies, cost savings, and reductions in fraud, waste and abuse. The report shall include, but not be limited to, facts describing:

- 14.1.1. The number and names of entities placed on the West Virginia Debarred List;
- 14.1.2. The number of stop payment orders issued to grantees;
- 14.1.3. Any savings realized as a result of the implementation of this act;
- 14.1.4. A statement of funds recovered and funds in the recovery process;
- 14.1.5. Any reductions in the number of duplicative audit report reviews; and
- 14.1.6. The overall number of state grants awarded that given year and the total amount of dollars awarded by each state agency.