



Management Directive

Commonwealth of Pennsylvania

Governor's Office

Management Directive 325.08 Amended – Remedies for Recipient Noncompliance with Audit Requirements

Date: November 24, 2021
By Direction of: *Greg Thall*
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This directive establishes policy, responsibilities, and procedures for Remedial Action against Recipients that fail to comply with Audit Requirements. This amendment changes the contact agency throughout and updates applicable references to the federal requirements, the role of the Bureau of Payable Services, definitions, policy, responsibilities, and procedures. Nothing in this directive supersedes federal requirements outlined in the Uniform Guidance, 2 C.F.R. Part 200.

1. PURPOSE.

To establish policy, responsibilities and procedures for Remedial Action against Recipients that fail to comply with Audit Requirements.

2. SCOPE.

This directive applies to all departments, offices, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction that provide Commonwealth Financial Assistance.

3. OBJECTIVES.

- a. To comply with 2 C.F.R. § 200.339, which provides remedies for noncompliance with federal statutes, regulations, or terms and conditions of a federal award, including the requirement to perform a single audit in accordance with 2 C.F.R. Part 200, Subpart F – Audit Requirements (Subpart F).
- b. To improve the financial management and accountability of Recipients' administration of Commonwealth Funded Programs by the performance of audits; submission of required audit reports and corrective action plans; and

timely implementation of necessary strengthening, correcting, or other required actions relative to audit findings and recommendations.

- c. To establish an audit process whereby Recipient audit reports and related corrective action plans enhance the administration of Commonwealth- Funded Programs at both the state and local levels.
- d. To emphasize the importance of the audit process, ensuring Recipients have in place a system of internal accounting and administrative controls to provide for the efficient administration of Commonwealth-Funded Programs, in compliance with applicable rules and regulations.

4. DEFINITIONS.

- a. **Audit Requirements.** Requirements established by Subpart F; contractual requirements pertaining to the completion of audits, submission of audit reports and corrective action plans, and resolution of audit findings; and applicable Commonwealth policies, rules, and regulations pertaining to the performance and reporting of audits.
- b. **Commonwealth Contractor Responsibility System.** An internet-based system used to collect and disseminate information regarding contractor obligations; suspensions and debarments by the Commonwealth, federal government and other governmental entities; and contractor performance issues. Agencies use the system during the contracting process in accordance with *Management Directive 215.09 Amended, Contractor Responsibility Program*, to determine if a contractor is considered responsible.
- c. **Commonwealth Financial Assistance.** Aid provided by a Commonwealth agency to carry out a program. Such aid may consist of state funds, federal funds, or a combination of state and federal funds, and may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, and other non-cash assistance. It does not include procurement contracts for goods or services related to the administrative support of the program.
- d. **Commonwealth-Funded Programs.** Programs supported, in whole or in part, by Commonwealth Financial Assistance.
- e. **Lead Agency.** The Commonwealth agency that provided the most pass-through federal funding to the Recipient or as otherwise assigned by BAFM.
- f. **Recipient.** Any person, government, nonprofit organization, or for-profit organization that receives Commonwealth Financial Assistance to carry out a program, excluding any individual that is a beneficiary of any such program. As used in this directive, "Recipient" includes entities classified as "subrecipients" under *Subpart F*.
- g. **Remedial Action.** An action or progressive series of actions taken against a Recipient that fails to comply with Audit Requirements or other applicable federal statutes, regulations, or terms and conditions pertaining to a federal award.

5. POLICY.

- a.** Agencies must develop and implement Remedial Action that reflects the unique requirements of each program, considering factors such as:
 - (1)** Source of funding: federal, state, or both.
 - (2)** Type of financial assistance: grant, contract, cooperative agreement, loan, etc.
 - (3)** Nature of financial assistance: subsidy, cost reimbursement, fixed fee, etc.
 - (4)** Frequency of the financial assistance: a one-time grant, a multi-year award, ongoing funding, etc.
 - (5)** Nature and severity of the noncompliance: for example, a corrective action not implemented on significant deficiencies or material findings, a corrective action not implemented on less significant deficiencies or immaterial findings, additional information needed to clarify findings or financial information not provided, a corrective action plan not provided, an audit report not submitted, etc.
 - (6)** Prior experience with the Recipient regarding its ability to administer a program in accordance with applicable laws and regulations.
 - (7)** Results of other program reviews or other forms of independent oversight of the Recipient.
 - (8)** Reasons and justification for the Recipient's failure to provide necessary information or take required action.

- b.** The Remedial Action should be implemented within six months from the date the first Remedial Action is initiated. At the end of the six-month period, the Recipient should take the appropriate corrective action or the final stage of Remedial Action should be imposed on the Recipient. Examples of Remedial Action include, but are not limited to:
 - (1)** Meeting or calling the Recipient to explain the importance and benefits of the audit and audit resolution processes, emphasizing the value of the audit as an administrative tool and the Commonwealth's reliance on an acceptable audit and prompt resolution as evidence of the Recipient's ability to properly administer the program.
 - (2)** Encouraging the entity to establish an audit committee or designate an individual as the single point of contact to:
 - (a)** Communicate regarding the audit.
 - (b)** Arrange for and oversee the audit.
 - (c)** Direct and monitor audit resolution.
 - (3)** Providing technical assistance to the Recipient in devising and implementing an appropriate plan to remedy the noncompliance.

- (4) Withholding a portion of assistance payments until the noncompliance is resolved.
 - (5) Withholding or disallowing overhead costs until the noncompliance is resolved.
 - (6) Suspending the assistance agreement until the noncompliance is resolved.
 - (7) Terminating the assistance agreement with the Recipient and, if necessary, seeking alternative entities to administer the program.
- c. When actions of the nature described in Section 5.b.(1) through 5.b.(7) are taken and the Recipient is not a local government, agencies shall make necessary entries to the Commonwealth Contractor Responsibility System and, if appropriate, consider the suspension or debarment of the Recipient, in accordance with *Management Directive 215.09 Amended, Contractor Responsibility Program*. Agencies may also develop and implement Remedial Action other than the examples listed in this directive as deemed appropriate based on the nature and operation of specific programs and provided such Remedial Action is in accordance with the provisions of this directive.
 - d. When Recipients fail to respond to requests made as part of BAFM's single audit report technical review process, BAFM shall notify affected agencies, in writing, of such Recipients and shall provide a description of the actions taken and responses received relative to the requested information. Affected agencies shall then take appropriate Remedial Action in accordance with the provisions of this directive and 2 C.F.R. § 200.339.
 - e. Agencies may request assistance from the Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services (BPS) regarding Remedial Action that withholds final approval of agreements or with unpaid SAP invoice documents.
 - f. Agencies may be designated to serve as the Lead Agency for the resolution of noncompliance with Audit Requirements and coordination of the imposition of Remedial Action when multiple agencies are affected.
 - g. Nothing in this directive supersedes federal requirements outlined in the Uniform Guidance, 2 C.F.R. Part 200.

6. RESPONSIBILITIES.

- a. **Agencies** shall:
 - (1) Institute procedures for Remedial Action in accordance with the provisions of Section 5 of this directive.
 - (2) Initiate Remedial Action upon learning of a Recipient's failure to comply with Audit Requirements.

- (3) Upon notification from BAFM of Recipients who have failed to submit a required single audit report to the Federal Audit Clearinghouse (FAC) or failed to satisfy the technical reporting requirements of *Subpart F*, initiate Remedial Action in accordance with the provisions of Section 5.d. of this directive.
 - (4) Implement all Remedial Action that affects the timing or amount of Commonwealth Financial Assistance, including, but not limited to, holding of grant agreements and timing of payments. Consult with BPS for assistance as necessary with Remedial Action that withholds final approval of agreements or unpaid SAP invoice documents prior to the implementation of such action.
 - (5) Share Remedial Action taken with other Commonwealth agencies passing federal funds through to Recipients.
 - (6) Serve as the Lead Agency, if designated.
- b. BAFM shall:**
- (1) Notify agencies when Recipients fail to comply with Audit Requirements.
 - (2) Provide technical advice and assistance to agencies concerning Recipient noncompliance with Audit Requirements.
 - (3) Designate a Lead Agency, as needed.
 - (4) Coordinate with federal agencies and monitor actions taken by federal agencies to obtain audit reports in instances when federal agencies have cognizance.
 - (5) Periodically monitor agencies by requesting internal audits or other means to ensure agencies take Remedial Action against Recipients for failure to comply with Audit Requirements.
- c. BPS shall provide assistance to agencies as requested regarding Remedial Action that withhold final approval of agreements or unpaid SAP invoice documents.**

7. PROCEDURES.

- a. Agencies.**
- (1) Develop and implements Remedial Action when Recipients fail to comply with Audit Requirements.
 - (2) Coordinate the resolution of non-compliance and imposition of Remedial Action when designated as the Lead Agency.
 - (3) Initiate Remedial Action in accordance with the provisions of Section 5 of this directive, upon notification of Recipient's noncompliance with Audit Requirements.
 - (4) Coordinate with BPS when Remedial Action requires the withholding of payments or suspension of agreements.

b. BAFM.

- (1)** Notifies agencies of Recipient's failure to comply with Audit Requirements.
- (2)** Designates a Lead Agency, as needed.
- (3)** Provides guidance to agencies, as needed, regarding Recipient noncompliance with Audit Requirements.
- (4)** Periodically monitors agencies to ensure agencies take Remedial Action against Recipients who fail to comply with Audit Requirements.

c. BPS. If requested, provides assistance to agencies regarding Remedial Action that withholds final approval of an agreement and with unpaid SAP invoice documents.

This directive replaces, in its entirety, Management Directive 325.08 Amended, dated December 17, 2014.