


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Remedies for Recipient Noncompliance with Audit Requirements	Number: 325.8 Amended
Date: December 17, 2014	By Direction of:  Charles B. Zogby, Secretary of the Budget
Contact Agency: Office of the Budget, Office of Comptroller Operations, Bureau of Audits (BOA), Telephone 717.783.0114	

This directive establishes policy, responsibilities, and procedures for remedial action against recipients that fail to comply with audit requirements. This amendment updates policy, responsibilities, and procedures for the codification of federal award requirements. Marginal dots are excluded due to major changes.

- 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, 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 CFR §200.338*, 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 CFR 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.** For the purpose of this directive, "audit requirements" refers to the 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 File.** A repository containing information on a contractor's status and past performance, including, but not limited to, liabilities owed to the commonwealth, tax delinquency, or deficient performance of contracted responsibilities. Agencies use the file during the contracting process in accordance with *Management Directive 215.9, Commonwealth 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 noncash 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. **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*.
- f. **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.
- g. **Schedule of Expenditures of Federal Awards (SEFA).** A listing of federal program expenditures for the period covered by the financial statements.

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. Overall periods for the implementation of remedial action should not exceed 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 items 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 file and, if appropriate, consider the suspension or debarment of the recipient, in accordance with *Management Directive 215.9, 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 BOA's single audit report technical review process, BOA shall notify affected state 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 CFR §200.338*.
- e. All remedial action that affects the timing or payment of commonwealth financial assistance provided to the recipient shall be coordinated with the Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services (BPS) prior to implementation. The recipient shall be notified, in writing, of such remedial action and a copy shall be provided to the director of BPS.
- f. When a recipient receives federal funds directly from the federal government and federal funds passed through the commonwealth, remedial action for failure to comply with *Subpart F* will be the responsibility of the federal agency having cognizance over the recipient.

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 BOA 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) Coordinate all remedial action that affects the timing or amount of commonwealth financial assistance with BPS prior to the implementation of such action.

b. Office of the Budget, Office of Comptroller Operations, Bureau of Audits 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, as needed, a lead agency to coordinate the imposition of remedial action.
- (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, through internal audits or other means, to ensure agencies take remedial action against recipients for failure to comply with audit requirements.

c. Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services shall coordinate with agencies all remedial action that affects the timing or payment of commonwealth financial assistance prior to the implementation of such action.

7. PROCEDURES.

- a. Agencies.** Develops and implements remedial action when recipients fail to comply with audit requirements.
- b. Office of the Budget, Office of Comptroller Operations, Bureau of Audits.**
 - (1) Notifies agencies of recipient's failure to comply with audit requirements.
 - (2) Designates a lead agency for the resolution of noncompliance with audit requirements when multiple agencies are affected.
 - (3) Provides guidance to agencies, as needed, regarding recipient noncompliance with audit requirements.

c. Agencies.

- (1) Initiates remedial action in accordance with the provisions of section 5 of this directive, upon notification of recipient's noncompliance with audit requirements.
- (2) Coordinates with BPS when remedial action requires the withholding of payments or suspension of agreements.

d. Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services. Coordinates with agencies when remedial action requires the withholding of payments or suspension of agreements.

e. Office of the Budget, Office of Comptroller Operations, Bureau of Audits. Periodically monitors agencies to ensure agencies take remedial action against recipients who fail to comply with audit requirements.

This directive replaces, in its entirety, *Management Directive 325.8*, dated August 17, 2009.