

Grant Noncompliance

Effective July 1, 2015

Grant recipients are responsible for managing State grant funds in compliance with statutes, rules, grant agreements, BWSR policies and guidance, local policies, and other applicable laws and requirements. BWSR has developed the following policy and procedure to categorize levels of noncompliance and identify typical procedures for when errors are found. BWSR staff has the discretion to consider factors not covered in these guidelines.

Often, mistakes in grants management result from simple misunderstandings and the majority of incidences are resolved without requiring a formal corrective action plan. When corrective actions are considered, the first goal is always to bring the grant recipient back into compliance.

Noncompliance is generally found through the review procedures of: monitoring, reconciliation, or verification. Noncompliance can be less (Level 1) or more severe (Level 2).

Level 1: Failure to follow required administrative procedures

Examples of Level 1 noncompliance may include, but are not limited to: lack of detail to justify an expense or payment, improperly completed forms or contracts, incorrect, insufficient, or late reporting, incomplete files, or deficient operation and maintenance plans. Deviation from locally-established policies or procedures may also be noted as Level 1 noncompliance.

Level 2: Failure to follow statute, rule, policy, or grant agreement

Examples of Level 2 noncompliance may include, but are not limited to, missing signatures or dates on contracts, overpayment on contracts, lack of required technical assessment or sign-off by a technical representative, installation of practices that are not allowed or failure to address program purpose, lack of an operation and maintenance plan, projects occurring outside contract starting or completion dates, or expenditure of funds outside the term of the grant agreement.

Repeated instances of Level 1 noncompliance may be recategorized as Level 2 noncompliance.

Noncompliance Procedure

Grant recipients will be notified when they are out of compliance in a memo, grant verification results form and letter, or other means of communication. The communication will be addressed to the chair of the LGU holding the grant, and copied to the LGU's administrator.

The memo or letter will document the noncompliance, and suggest corrective actions to bring the grant recipient back into compliance, including any repayment or additional penalty. The grant recipient must respond to BWSR with a plan that addresses each corrective action. BWSR must approve the corrective action plan for the grant recipient to be back in compliance.

Repayment or Additional Penalty

Minnesota Statutes §103C.401 (2014) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe (generally, Level 2), or if work under the grant agreement is found by BWSR to be unsatisfactory or performed in violation of federal, state, or local law, BWSR has the authority to require the repayment of grant funds, or an additional penalty. Penalties can be assessed at a rate up to 150% of the grant agreement.

For a finding of noncompliance, BWSR also has the authority to withhold payments on grants. This authority is provided under the Minnesota Department of Administration's Office of Grants Management Policy 08-13, Grant Closeout Evaluation, that requires state agencies to consider a grant applicant's past performance before awarding subsequent grants or making a new grant award of over \$5,000.

All noncompetitive grants for which funding is requested may be reduced by five percent of the original grant amount for missed deadlines, with an additional five percent reduction of the original grant amount for each month late. When a future grant allocation has been reduced by 50%, because of repeated instances of lateness or missed deadlines, the entire grant allocation will be forfeited.

For competitive grants, reimbursement payments may be reduced by the same amount for missed deadlines as for noncompetitive grants. When a future grant payment has been reduced by 50%, because of repeated instances of lateness or missed deadlines, the entire remaining grant payment will be forfeited.

Until the noncompliance is resolved, payments will not be made on any grant to the noncompliant grantee.

Alternatives may also be considered and used at the discretion of BWSR.

Appeal

If a finding of noncompliance by BWSR involves repayment or an additional penalty, a grant recipient may appeal that finding. The appeal must be in writing and include all supporting evidence and be sent to the BWSR Regional Manager within 30 days of receiving the communication from BWSR that assesses the penalty. The Executive Director will review the appeal and supporting evidence and render a decision. The Executive Director may stay the penalty until the appeal is resolved. All additional penalties are stayed for the duration of the appeal.

If no resolution can be achieved between the grant recipient and the Executive Director, the grant recipient may request in writing to the chair of the Board for the appeal to be heard by the BWSR Dispute Resolution Committee. The Committee will make a recommendation to the Board to dismiss, amend, or uphold the appeal.

The Board must notify the grant recipient and BWSR staff of its decision.