

available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, we may consider any information that has come to our attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies that we identify, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

(6) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities;

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

(10) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand;

(11) Failure to ensure that a subrecipient complies with its OMB Circular A-133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.

#### **Subpart B—Administrative Rules, Costs and Limitations**

##### **§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?**

(a) *Uniform fiscal and administrative requirements.* (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97.

(2) Except as provided in paragraphs (a)(3) through (7) of this section, institutions of higher education, hospitals, other non-profit organizations, and commercial organizations must follow the common rule implementing OMB Circular A-110 which is codified at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed. (WIA sec. 184(a)(3)(B).)

(4) In addition to the requirements at 29 CFR 95.42 or 29 CFR 97.36(b)(3) (as appropriate), which address codes of conduct and conflict of interest issues related to employees:

(i) A State Board member or a Local Board member or a Youth Council member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board, the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as

appropriate), must be used for the all program income earned under WIA title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

(6) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIA sec. 195(7)(A) and (B).)

(7) Interest income earned on funds received under WIA title I must be included in program income. (WIA sec. 195(7)(B)(iii).)

(8) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(b) *Audit requirements.* (1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A-133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(2)(i) We are responsible for audits of commercial organizations which are direct recipients of Federal financial assistance under WIA title I.

(ii) Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A-133 (\$300,000 as of August 11, 2000) must have either an organization-wide audit conducted in accordance with A-133 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are described in