

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Center for Enterprise Community Initiatives and Development, Inc.
Docket No. A-11-78
Decision No. 2432
December 23, 2011

DECISION

Center for Enterprise Community Initiatives and Development, Inc. (CECID) appealed a determination by the Administration for Children and Families (ACF) disallowing \$450,000, the amount of a grant awarded to CECID under the Jobs for Low-Income Individuals (JOLI) program for the period September 30, 2007 to September 29, 2010. CECID sought and was awarded the grant with an objective to create 129 jobs in the San Antonio area for low-income individuals in the field of information technology (IT), by providing: 1) IT training to low-income individuals; 2) those trained individuals with financial assistance to establish IT businesses and entrepreneurial opportunities; and 3) loans to businesses and technical assistance to 30 private employers to enable them to expand their operations and create IT jobs. ACF disallowed the grant funds on the ground that CECID materially failed to comply with the terms and conditions of the grant award.

For the reasons explained below, we sustain the disallowance. We conclude that CECID failed to establish that: 1) any low-income individual obtained an IT job as CECID repeatedly claimed to ACF); 2) any low-income individual actually completed IT training; and 3) any loan funds from the grant were used to create or expand an IT business. Moreover, CECID failed to meet its burden, as a recipient of federal grant funds, of demonstrating that it spent the funds on allowable costs of providing the program activities required by the grant, in accordance with grant terms and conditions. Accordingly, ACF was authorized under the regulations to disallow the entire grant award.

Applicable Legal Provisions

Non-profit organizations such as CECID that receive federal grants are bound by the uniform administrative requirements at 45 C.F.R. Part 74 and the cost principles in Office of Management and Budget (OMB) Circular A-122, codified at 2 C.F.R. Part 230. 45 C.F.R. §§ 74.1, 74.27. Additionally, grant awards set forth terms and conditions with which grantees must comply. The grant award informed CECID that it was required to comply with not only Part 74 and OMB Circular A-122, but also with the HHS Grants

Policy Statement (GPS). ACF Ex. 3 (notice of grant award). The GPS provides, among other things, that grantees must maintain financial management systems that are adequate to account for the expenditure of grant funds and to ensure that such funds are handled responsibly. GPS at II-61 (accessible at <http://www.hhs.gov/grantsnet/docs/HHSGPS107.doc>).

To be allowable charges to federal grant funds, a grantee's costs must be both "reasonable for the performance of the award and be allocable thereto under these principles" and must be "adequately documented." 2 C.F.R. Part 230, App. A, ¶ A.2. The regulations also set forth documentation standards. These standards require, among other things, that a grantee have a financial management system that provides "[r]ecords that identify adequately the source and application of federal funds" as well as "[a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. §§ 74.21(b)(2), (b)(7). Grantees also are responsible for maintaining documentation "to account for receipt, obligation and expenditure of [grant] funds." 45 C.F.R. § 74.22(i)(1).

The Board has repeatedly held that, under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. *Benaroya Research Institute*, DAB No. 2197 (2008) (citing cases). The Board has also held that "[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee," and that "[o]nce a cost is questioned as lacking documentation, the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant." *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007); *see also Northstar Youth Services*, DAB No. 1844, at 5 (2003).

The Part 74 regulations state that if the recipient of a federal grant award "materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award," the federal awarding agency may, among other remedies, "[d]isallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance." 45 C.F.R. § 74.62(a)(3); *Tuscarora Tribe of North Carolina*, DAB No. 1835, at 11 (2002).

Background

The JOLI program, which ACF administers through its Office of Community Services (OCS), "helps low-income individuals achieve economic self-sufficiency" by awarding grants to non-profit organizations to provide "provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for low-income individuals." ACF Ex. 1, at 1 (grant

announcement); *see* 42 U.S.C. § 1315 note.¹ JOLI grantees “create jobs through business plans and the provision of technical and/or financial assistance to private employers in the community” and “assist in creating new employment and business opportunities for individuals receiving Temporary Assistance for Needy Families (TANF) and for other low-income individuals.” ACF Ex. 1, at 3. Priority in awarding JOLI grants is “given to applicants proposing to serve those areas containing the highest percentage of individuals receiving TANF . . . and individuals whose income level does not exceed 100 percent of the official poverty line.” *Id.* As part of the JOLI program, grantees “create a revolving loan fund and make at or below market rate loans to eligible beneficiaries for business development activities.” *Id.*

JOLI projects funded under the grant at issue here “focus on one of three program strategies to create new jobs and employment opportunities: 1) new business ventures, 2) business expansion, and 3) self-employment/micro-enterprise.” ACF Ex. 1, at 2. Applicants were required to show “that the proposed project will develop a new business that will train and employ TANF and/or low-income persons to work within that business,” “that the proposed project will provide technical and/or financial assistance to businesses already in existence to allow the businesses to expand by helping them to obtain better marketing services, contracts, access to additional money to help the business grow, etc., resulting in the creation of new, permanent, full-time jobs for low-income persons,” or “that the proposed project will create self-employment/micro-enterprise opportunities for eligible participants.” *Id.* at 7. Applicants were also required to provide a description of the estimated number of new, full-time permanent jobs that would be created during the project period, and to show that jobs (or self-employment opportunities) created under the grant program would be sustainable for a minimum of 12 months and that they would not have existed but for grant project activities. *Id.* at 14, 38.

CECID, a non-profit, tax-exempt corporation located in San Antonio, Texas, applied for a three-year, \$450,000 JOLI grant in June 2007, to establish what CECID called its Self-Sufficiency through Technical Employment Project (STEP). CECID sought funding “to provide technical and financial assistance to 30 private employers in the community for the creation of 105 specialized IT jobs (70% for TANF recipients) and to create 24 IT entrepreneurial opportunities (70% for TANF recipients) and 30% respectively for low-income individuals, with a projected “impact” of creating “129 high paying technical jobs.” ACF Ex. 2 (grant application) at 1, 17, 32.

CECID also stated in its grant application that it would provide “specialized technical assistance and entrepreneurial support services designed to sustain entrepreneurial opportunities” including “sector specific business training” consisting of a “five-week,

¹ The JOLI program is authorized by section 505 of Public Law No. 100-485 (Oct. 13, 1988), as amended by section 112 of Public Law No. 104-193 (Aug. 22, 1996).

twenty five hour course” in both “a classroom and hands-on setting” that would “review the basics of creating and managing a small business” and in which participants would “work with instructors to develop a thorough, customized business plan, increasing the probability of starting and maintaining a successful business.” *Id.* at 22. CECID further proposed to use \$100,000 of the \$450,000 to establish a revolving loan fund “to augment the provision and access to capital for the target population” through “microloans” of up to \$15,000 to individual businesses and new start-up businesses. *Id.* at 9, 26. Finally, CECID asserted that “STEP utilizes an innovative approach not seen in JOLI programs over the years by offering High Technology training and entrepreneurial opportunities that thrice exceed the current minimum wage level” and that “offers TANF and low-income participants high Technology Training that leads to multiple levels of Industry certification.” *Id.* at 19.

ACF, through OCS, accepted CECID’s grant application and awarded CECID a \$450,000 JOLI grant for the period September 30, 2007 through September 29, 2010. ACF Ex. 3. The \$450,000 award included as a budget line item the \$100,000 that CECID requested to start a revolving loan fund. The awarding document stated that the award was subject to applicable requirements of the GPS and the requirements of 45 C.F.R. Part 74. ACF Ex. 3, at 1.

Following receipt of the grant award, CECID repeatedly reported to OCS that it was meeting the grant objective of creating jobs for low-income individuals by providing IT training and by making loans to San Antonio businesses. ACF Ex. 14, at 5, 23-24, 34, 37, 42, 50. Yet, ACF states that it was unable to verify any of those reports, notwithstanding repeated, ongoing requests for information and records of CECID’s grant program and conducting monitoring site visits to CECID during April 27 through 29, 2009 and August 31 through September 2, 2010. After ACF took the disallowance, ACF again attempted, unsuccessfully, to confirm that a low-income individual received an IT job or completed IT training, or that a business created an IT job as a result of CECID’s technical or financial assistance or used loan funds for grant purposes. In issuing the disallowance, ACF concluded that “Federal monitors reported no observance of program activities at CECID, nor could CECID validate or produce any of the individuals it claimed to have launched into business.” ACF Ex. 12 (disallowance letter).

Before us, CECID contends that it complied with the terms and conditions of the grant and that it provided documentation to support its claim and that any failures associated with the grant were caused by ACF’s incompetence. ACF reiterates that it “has been unable to confirm the project created jobs, provided loans for business capitalization or entailed the technical assistance described” or to “locate any individual who confirms that he or she has created a job through micro-enterprise lending, or any business that confirms a job was created, as a result of CECID’s project.” ACF Br. at 5, 7. According to ACF, “there has been no verifiable indication that the primary purpose of the project - job creation - has been substantially achieved.” *Id.* at 7. Thus, ACF contends, because

CECID has failed to demonstrate that it made any progress toward achieving the terms and conditions of the grant, as well as the underlying objective of job creation, the regulations authorize the agency to disallow the entire amount of the grant funds awarded to CECID.

Discussion

ACF determined to disallow the entire amount awarded to CECID, in part, based on CECID's failure to achieve grant objectives. A failure to achieve grant objectives does not necessarily mean that a grantee has not incurred allowable costs in furtherance of those objectives. As we explain below, however, CECID's failure to show it had any success (despite its ongoing assurances about its attainment of grant goals) is so egregious it calls into question not only whether CECID engaged in any of the activities for which the funds were awarded but also the credibility of CECID's representations. Moreover, what little documentation CECID produced, despite ample opportunity to do so, is wholly inadequate to show it incurred allowable costs for grant activities. Thus, we conclude that ACF was justified, under the particular circumstances of this case, in disallowing the entire award amount.²

- I. CECID failed to establish that it created any IT jobs for low-income individuals or that a low-income individual had obtained an IT job as a result of grant activities.

CECID sought grant funding to create or find 129 jobs IT jobs for low-income individuals through its JOLI grant program, and consistently reported, during and after the grant period, that it had accomplished and was continuing to accomplish that goal. ACF Ex. 2 (grant application) at 1, 17, 32. CECID represented to ACF in semi-annual reports that 30 jobs were created through business expansion and 15 through new business start-up during April 1 through September 29, 2008; that 26 jobs were created through business expansion (two of which were not IT related) and ten through new business start-up during October 1, 2008 through March 31, 2009; that 11 jobs were created through business expansion and four jobs through new business start-up during April 1, 2009 through September 30, 2009; and that 37 jobs were created through business expansion during October 1, 2009 through March 31, 2009. ACF Ex. 14, at 5, 23-24, 34, 37, 42. CECID's final report on the grant submitted in December 2010 included a chart titled "STEP IT Direct Job Creation." The chart stated that 112 jobs were created during October 2007 through March 2010. ACF Ex. 14, at 50. On appeal,

² On December 14, 2011, CECID filed a motion to dismiss ACF's disallowance of the grant funds at issue on the grounds that the disallowance "was hastily concocted, baseless and without merit." CECID Motion To Dismiss at 2. This motion is essentially a request that we reverse the disallowance on grounds we address and reject below.

CECID claims that “the objectives of job creation was also met and exceeded through direct job creation and indirect job creation for Information Technology support and network positions,” and that 48 TANF recipients “were placed on IT jobs.” CECID also claims that “[j]obs created through entrepreneurship, direct job and indirect jobs creation were IT computer repair and computer network jobs with wage rates between \$12 to \$22/hour.” CECID Br. at 3-5.

Yet, CECID has failed to establish any basis for these representations. For example, ACF “has been unable to locate any individual who confirms that he or she has created a job, or any business that confirms a job was created, as a result of CECID’s project.” ACF Br. at 7. In addition, CECID has not produced any documentation or a statement from any individual that can confirm having received an IT job or demonstrating that a business created an IT job as a result of the JOLI project. CECID’s failure to produce such documentation corroborates OCS’s findings that led to the disallowance.

During the April 2009 visit, CECID’s executive director provided OCS with a list of 14 new businesses that CECID claimed to have been started or expanded as a result of CECID’s JOLI grant program. ACF Ex. 15, at 4 (Shanklin Decl.); *see also* ACF Ex. 4, at 5 (list of businesses with site visitor’s annotations). The OCS program specialist who conducted the site visit, Gerald Shanklin, and Patrice Sienche, an OCS consultant contractor who accompanied him, called nine of the businesses and spoke with two business owners, neither of whom reported expanding his business or hiring any person as a result of involvement with CECID. ACF Ex. 15, at 4; *see also* ACF Ex. 4, at 10 (monitoring report). The remaining telephone numbers on the list of businesses CECID provided were either non-working or unanswered numbers. ACF Ex. 15, at 4.

The site visitors also interviewed two CECID contract employees who stated that they had conducted training for CECID and had advised two businesses that had applied for loans from CECID. *Id.* at 2-3. One of these contractors indicated that about 10 persons had obtained jobs and that he had helped one person start a shoe-shine business and had helped one person obtain a job as a barber and another obtain a job as a finance director for car sales. However, the contractor did not indicate that any of these positions were IT jobs or came about through IT business creation or expansion. The other person with whom Mr. Shanklin spoke indicated that his program activities had not furthered the expansion of any businesses to create jobs. *Id.* Additionally, an OCS contractor, Andrew Kolly, called all 67 of the 80 alleged training graduates for whom CECID provided telephone numbers to ACF during the appeal and could not find anyone who had obtained an IT job, or even, as we discuss in the next section, anyone who had completed IT training provided by CECID. ACF Ex. 17, at 2 (Kolly Decl.).

ACF also could not verify, nor has CECID established, that any jobs were created, or that any business was expanded through assistance from the revolving loan fund. During the appeal ACF asked CECID to provide records verifying that CECID had provided

program and business activities, including contact information for 17 San Antonio businesses identified as loan recipients. ACF Ex. 13, at 8-11 (CECID letter to ACF, Aug. 22, 2011). The OCS program specialist who conducted the 2010 site visit, Karen Harris, stated that she attempted to call the 17 loan recipients CECID identified for records verifying that CECID had provided program and business activities. ACF Ex. 13, at 1-2 (ACF letter, Aug. 9, 2011) and 8-11 (CECID letter to ACF, Aug. 22, 2011). Ms. Harris found that all of the phone numbers were either wrong numbers, non-working numbers, or unidentified voicemails. ACF Ex. 16, at 4 (Harris Decl.). One call, she stated, was answered by a woman who provided the same last name as CECID's executive director and refused to answer any questions when Ms. Harris identified herself. *Id.* Among this multitude of businesses that CECID claims to have assisted, created or expanded by the proposed project, the record demonstrates that ACF was not able to reach a single one that confirms any loans or material technical assistance toward creating an IT job as a result of its project or any low-income individual who confirms that he or she has obtained a job as a result of the grant claimed activities.

The record demonstrates that CECID's representations that it created IT jobs as a result of the technical and financial assistance related to the grant are simply not credible. Accordingly, we conclude CECID failed to establish that it created any IT jobs for low-income individuals or that a low-income individual had obtained an IT job as a result of grant activities.

II. CECID failed to establish that it provided complete IT training and technical assistance to low-income individuals.

As discussed, to create and find IT jobs for low-income persons, CECID committed to provide IT training and assistance to low-income individuals. As with its job-creation claims, CECID repeatedly represented over a period of time that it had provided and was accomplishing those program steps. However, as discussed below, the record evidence is fraught with inconsistencies and indicia of unreliability, and the record as a whole does not credibly establish that CECID actually engaged in the IT training activities as required by its grant.

CECID represented in its grant application that it would provide IT training and technical assistance to low-income individuals to qualify them for IT jobs and entrepreneurship opportunities. As with its job-creation claims, CECID repeatedly represented to OCS that it successfully carried out these program activities. For example, CECID reported to ACF that during April 1 to September 29, 2008, 43 program participants had "undergone computer repair and network training," 40 participants "were provided training and services" in marketing, financial management and taxation, sales management, PC repair, and network implantation, 45 were assisted with the development of business plans, and 12 were assisted in obtaining loans from local banks. ACF Ex. 14, at 13. Its final report to OCS states that 109 participants had completed IT training for a total of 2,895

classroom hours. *Id.* at 50. On appeal, CECID asserts that “[d]uring the grant period over 100 targeted program individuals underwent training and acquired skills in information technology that led to good employment and greater self-sufficiency.” CECID Br. at 3; *see also* CECID Ex. B (100 “Certificates of Training” for IT courses dated May 2008 – June 2010).

Again, however, the record demonstrates that ACF was unable to locate, nor has CECID identified, any individual in the targeted population who completed IT training provided by CECID. During the appeal ACF asked CECID to provide records verifying that CECID had provided IT training activities, including contact information for individuals who had received or given training. ACF Ex. 13, at 1-2 (ACF letter, Aug. 9, 2011); ACF Br. at 10. In response, CECID submitted a list of 80 persons that it identified as graduates of JOLI training programs, with telephone numbers for 67 of them. ACF Ex. 13, at 8-11 (CECID letter to ACF, Aug. 22, 2011). ACF then submitted Mr. Kolly’s sworn declaration detailing his unsuccessful attempts during the last week of August 2011 to verify CECID’s claims by calling all of the 80 persons CECID identified as graduates of IT training. ACF Ex. 17, at 2 (Kolly Decl.). He reported that all but two of the telephone numbers CECID provided were either not in service, incorrect, or unresponsive. *Id.* at 2 (stating that 43 phone numbers were disconnected or not working, 11 did not return messages left on unidentified voicemails, nine were incorrect, two were fax machines, and CECID did not provide telephone numbers for 13 individuals).

According to Mr. Kolly, one of the two individuals contacted – whose name appears on a certificate of completion of a “Microsoft Server Administration Training program” that CECID submitted – said he attended two courses but had not completed either. *Id.*; CECID Ex. B. The first course, a computer training course, was abruptly cancelled right before the class began, after the instructor stated that his mother was ill. ACF Ex. 17, at 2. The second course was a computer training course on “Network Plus” that was attended by a few other students who were present on the first day but not for any of the four of five subsequent classes that he attended. *Id.* at 3. This individual “provided no indication that the course described was designed to create jobs through the development of a new business, business expansion or micro-enterprise development.” *Id.*

On September 15, 2011, Mr. Kolly talked by telephone to the other individual. *Id.* According to Mr. Kolly, this individual said that he had completed a training course on the subject of helping low-income individuals secure employment and suitable living arrangements; the course was attended by fewer than 10 students and was taught by the CECID executive director and two other instructors whose names he could not recall. *Id.* This individual further told Mr. Kolly that he would call back to provide more details concerning the course after looking at records from the training. ACF Ex. 17, at 3-4. The Board, over CECID’s objection, granted ACF an extension of time for the submission of its brief to permit it to follow up with this individual. *Id.* at 3-4. Mr. Kolly subsequently reported that he was unable to reach the individual despite several attempts

to do so. *Id.* He also reported that neither of the two individuals he contacted provided any indication that the courses described were “designed to create jobs through the development of a new business, business expansion or micro-enterprise development.” *Id.* at 2, 3.

In response to ACF’s reports of its unsuccessful attempts to verify that any low-income individual completed IT training or obtained an IT job, CECID has not proffered the statement of any individual who completed IT training, or anyone who obtained or created an IT job through the grant program. Moreover, the record, including evidence CECID cites, is not sufficient to show that CECID carried out training activities consistent with the terms and conditions of the grant, for the following reasons.

- OCS personnel did not observe any program activities, such as IT training, during either of the site visits to CECID in 2009 and 2010. ACF Ex. 15 at 5; ACF Ex. 16 at 2-3. Indeed, ACF reported that during the 2010 site visit, CECID’s executive director was the only CECID staff person at the site while Ms. Harris was there from 9:00 am until 3:00 pm on, and “[t]hroughout the site visit there were no program participants, trainings or other organizational or project activities occurring.” ACF Ex. 16, at 2-3.
- CECID has not demonstrated that it provided training at locations other than its office of record, as it now claims, because it would be more convenient to reach the targeted population. CECID Br. at 2 In support of this claim, CECID submitted three lease agreements for San Antonio properties on appeal. However, none of these leases support CECID’s claim. One of these leases was for the office of record (1123-C Babcock Road, San Antonio), where no grant-related activity was observed. CECID Ex. 4. Indeed, the lease for this location actually had expired before the grant period began. It also lists CECID as “dba Five Star Medical Supply,” which, as Mr. Shanklin observed, is a private company owned by individual with same name as CECID’s Executive Director “involved in the sale of hospital equipment and supplies . . . with an annual revenue of \$1 to 2.5 million.” ACF Ex. 15, at 5. The second lease involved a residential property and stated that the property (2623 W. Salinas, San Antonio) was to be used “exclusively as a private single family residence.” *Id.*³ The third lease (700 Zarzamora, San Antonio) was for only “493 rentable square feet,” and CECID provided no evidence showing that it conducted training there. *Id.* Additionally, Ms. Harris stated that CECID’s executive director “provided no indication that

³ We note that Ms. Harris, the OCS program specialist who conducted the 2010 site visit, reported driving to “a large home” that according to the Executive Director was the location of a youth center supported by a different ACF grant, and found it locked with no apparent activity or persons. ACF Ex. 16, at 4.

CECID was [providing] services during the time of our visit at any other location.” ACF Ex. 16, at 3.

- CECID did not provide any credible information that the persons it claimed to have trained listed on the course completion certificates contained in CECID Exhibit B were low-income individuals whom CECID committed to serve as a condition of the grant. See ACF Ex. 1, at 1 (grant announcement stating that priority in awarding JOLI grants is “given to applicants proposing to serve those areas containing the highest percentage of individuals receiving TANF . . . and individuals whose income level does not exceed 100 percent of the official poverty line”); ACF Ex. 2 at 1, 17 (grant application goal of 70% of specialized IT jobs and entrepreneurial opportunities created to be for TANF recipients, 30% for other low-income individuals). For example, CECID has not provided any documentation from alleged training recipients, such as signed intake or application forms or other enrollment forms filed by program participants documenting their status as TANF recipients or low-income persons that CECID committed to serve. Thus, even if these individuals had received IT training, CECID has not shown that the training provided was consistent with the terms and conditions of its grant award.
- None of the three persons identified as training instructors in the grant application (one program specialist and two program training specialists) is listed in CECID’s records as an employee of the grant project and none was seen during either site visit. ACF Exs. 2, at 37, 99 -105 (grant application); 8 at 1, 8 (employee and contractor payment records). CECID has refused to identify other unnamed persons who provided training or other activities, claiming that such information was “[n]ot available due to privacy of information” and asserted without explanation that disclosure of the identities of staff is forbidden by “The Privacy Act of 1974.”⁴ ACF Ex. 13, at 3 (CECID letter to ACF, Aug. 22, 2011). This argument is without merit. The applicable regulations require grantees to afford the awarding agency “timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents” including “reasonable access to a recipient’s personnel for the purpose of interview and discussion related to such documents.” 45 C.F.R. § 74.53(e). The Department’s regulations implementing the Privacy Act specifically provide that it

⁴ In its Reply Brief, CECID for the first time identifies four individuals that it claims provided technical assistance to “several IT business entities” and “also provided training to several TANF eligible individuals.” CECID Reply at 7-8. However, CECID’s vague allegations fail to identify either the businesses or individuals that purportedly received technical assistance and training, nor does CECID allege that such activities involved IT training consistent with the terms and conditions of the grant.

does not apply to grantees administering federally funded programs. 45 C.F.R. § 5.b.2(e)(4). Thus, CECID's claim of a blanket protection against disclosing requested information to ACF is without merit. Federal regulations further require grantees to obtain prior agency approval for changes in "key persons specified in the application or award document." 45 C.F.R. § 74.25(c). CECID was thus required by the terms and conditions of its grant to identify any IT training instructors not named in its grant application.

- As evidence of its training activities, CECID submitted a flyer advertising a one-day workshop called "Growing Your Small IT Business/Next Steps in Your Business Growth" purportedly presented by CECID's STEP program on March 12, 2008 and October 17, 2007 in San Antonio. CECID Ex. 7. The flyer lists several individuals with their company affiliation as participants. According to Mr. Kolly, he contacted two of these identified participants. One had never spoken in San Antonio and had never heard of CECID or its executive director, though he recognized the description of the event as similar to a program that he had attended in British Columbia, which had not been hosted by CECID. ACF Ex. 18, at 1-2 (Kolly Supp. Decl.). The other person contacted stated that she had never been to San Antonio, but she had participated on an IT business panel in British Columbia. *Id.* CECID also did not provide any evidence showing that the advertised workshop was actually conducted.
- CECID also argues that the federal monitors visited CECID after most training had occurred and that training was conducted at locations other than the CECID address of record where the monitors visited. CECID Br. at 2. CECID's claim that training was mostly completed before the site visits is inconsistent with the certificates of training it submitted, some of which were awarded in June, September and December 2009 and March and June 2010, after the first site visit. CECID Ex. B. It is also inconsistent with the final progress report showing that 35 of the participants completed training during the period April through September 2009. ACF Ex. 14, at 50. Accepting that CECID provided some training at other locations does not explain CECID's failure to proffer evidence that any low-income individuals had actually completed IT training or been placed in IT jobs.

As evidence that it provided the required IT training, CECID also submitted copies of checks made out to various individuals that were described as payments to employees and contracts for completing the IT training and other services under the program. However, these checks by themselves do not establish that CECID actually provided the IT training as claimed. Instead, they raise additional questions about CECID's compliance with grant terms and conditions. CECID Exs. 3, 5; CECID Reply at 9. For example, each of these checks bears only one signature, that of the Executive Director, including 41 checks the executive director wrote to himself. This is contrary to CECID's "Accounting, Audit and Financial Management Policies" that requires two signatures on

all checks written on CECID accounts. ACF Ex. 5, at 9. Eight of the checks from 2008 are made out to an individual whose name does not appear on CECID's list of employees and contractors or summaries of contractors, in the ledger of payments during 2008, or in the actual contracts in the record. CECID Ex. 3; ACF Ex. 8, at 1, 2 – 7, 9 – 35. Other checks were made out to the daughter of CECID's Executive Director. ACF Surreply at 9; ACF Ex. 18 (internet search screen capture). Although this individual was paid for IT training and CECID submitted contractor billing sheets, she was not among the trainers identified in CECID's grant application, whose resumes CECID submitted with the grant application. CECID Ex. 5; ACF Surreply at 9; ACF Br. at 13-14.

Accordingly, we conclude that CECID failed to establish that it provided complete IT training and technical assistance to low-income individuals.

III. CECID failed to establish that it implemented the revolving loan fund consistent with grant terms and conditions.

CECID also represented in its grant application that it would provide loans to IT businesses and entrepreneurs to permit them to expand or create IT businesses and hire low-income participants in CECID's grant program, and \$100,000 out of the total grant award was budgeted to establish a revolving loan fund. ACF acknowledges that CECID's records indicated it made 17 loans totaling over \$100,000. ACF Br. at 11, citing ACF (loan materials); *see also* CECID Br. at 5 (loans "totaling \$103,650" were "made to 17 start-up Entrepreneurs"). As discussed above, however, Ms. Harris, the OCS program specialist, called all 17 businesses that purportedly received loans from CECID and found that none could verify any aspect of the loans, such as having received the loans or using the funds consistent with the purposes of the grant. In addition to the questions raised by the failure of the 17 businesses to confirm that the loans were actually used for grant purposes, the documentary record is problematic at best and does not establish that CECID implemented the revolving loan program consistent with grant terms and conditions, for the following reasons.

- CECID's loan records are inundated with inconsistencies, inaccuracies and omissions that demonstrate a lack of accountability for the funds and fail to include important application materials that are required by CECID's own lending policy to be included in the loan files.⁵ For example, CECID does not contest ACF's citation to "loans exceeding the amount requested[,] . . . loan disbursements

⁵ Missing documents required by the loan policy are said to comprise "credit reports, verification of the 'legal entity's status;' business plans with financial projections and documentation of the borrowers' alternate sources of income." ACF Br. at 12, citing ACF Ex. 11 at 8-12 (Revolving Loan Fund Lending Policy at 2).

premised on promissory notes that were never signed by a lender or dated by either party[,] . . . a loan payment that exceeds the amount of the promissory note[,] . . . a loan disbursed without any promissory note[,] . . . and loans paid in money orders that do not account for the full amount of the loan[.]” ACF Br. at 11, citing ACF Ex. 9, at 21, 31, 44, 50, 75, 88, 102; ACF Ex. 10, at 5, 42. Thus, CECID’s records evidence deficient recordkeeping practices and unorthodox payments that constitute a lack of the effective control over and accountability for federal funds that is required by department-wide rules at 45 C.F.R. § 74.21(b)(3).

- CECID refused to disclose the identity of the members of the loan committee, whose approval was required for all transactions in the loan process, again citing the same privacy concerns that it claimed barred disclosure of training instructors. ACF Exs. 11, at 4 (Revolving Loan Fund Lending Policy); 13, at 3 (CECID letter to ACF, Aug. 22, 2011). As discussed above, CECID’s assertions of privacy concerns are without merit. CECID’s refusal to provide contact information for persons who participated in the loan approval process is particularly troubling, given the problematic nature of the loan documentation. The loan committee “checklists” CECID provided with its reply provide little information about each loan (such as its purpose) and are replete with inconsistencies when compared to other loan materials. For example, there are two separate approvals for loans to an entity called “Intersys Ltd.,” but only one request for a loan. CECID Ex. 10. In addition, there is no documentation of any approval for a loan to “ET PC Solutions,” although other CECID records include a promissory note and \$10,000 cashier’s check to ET PC Solutions. ACF Ex. 9, at 44-49. All the loans were also made in the form of money orders or cashier’s checks, which Ms. Harris stated was highly unusual and to her knowledge unique among JOLI grantees’ loan funds, and which, as ACF stated, “hinders any ability to account for the funds.” ACF Ex. 9, at 7-8, 14, 20, 30, 36, 42, 49, 55, 61, 67, 73-74, 80, 86-87, 93-94, 100, 107; ACF Ex. 16, at 3-4 (Harris Decl.); ACF Br. at 12.
- CECID’s failure to identify the members of its loan committee also raises a potential concern as to whether a conflict of interest exists amongst its Board Members. CECID does not dispute that the Board Chair was the wife of CECID’s Executive Director or that another Board Member was a CECID contractor paid as a consultant. ACF Exs. 13, at 7; 16, at 3; CECID Br. at 7. This hiring of a Board Member as a contractor, and relatives of Board Members as the executive director and a contractor, violated applicable provisions forbidding personnel arrangements that create the appearance of a conflict of interest. *See* 45 C.F.R. § 74.42 (forbidding an employee or officer of a grantee from participating in the selection, award, or administration of a contract supported by federal funds if the employee “or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.”).

CECID's payments to its Board Member who was also a contractor were not allowable charges to federal funds under OMB Circular A-122, which permits payments for the costs of professional and consultant services only to persons "who are not officers or employees of the non-profit organization[.]" 2 C.F.R. Part 230, App. B, ¶ 37.a; see *Strategic Community Services, Inc*, DAB No. 2333 (2010) (grantee violated the conflict of interest provisions by hiring as consultant one of its officers who was also the brother of grantee's president; payments to board member unallowable). CECID's failure to observe the conflict of interest requirements in the federal rules and in its own policies are further examples of its pervasive failure to materially comply with the terms and conditions of its grant. While CECID blames OCS for not providing better guidance on this and other matters relating to the grant, CECID Reply Br. at 9, CECID as a federal grantee was charged with knowledge of the regulations that affected its grant including section 74.42 and the progress and final reports it submitted.

- CECID's executive director told Ms. Harris during the 2010 site visit that all of the loans had defaulted. ACF Surreply at 6; ACF Ex. 16, at 2-3. CECID asserts on appeal that no loan recipient had defaulted as of the end of the grant period (September 29, 2010). CECID Br. at 6. CECID still has not provided records verifying payments from any of the borrowers, however, notwithstanding that according to the loan records, repayments on 14 of the loans were due prior to the end of the grant period, and the deadline for some repayment on all of the loans has passed. ACF Br. at 12-13; ACF Surreply at 6; ACF Ex. 9. CECID submitted a one-page "activity summary" from Wells Fargo bank as alleged evidence of repayment. That document has a one-line entry showing "Deposits/Credits" of \$101,858.67 during the last five days of June 2009, which is insufficient to establish that any loans were repaid and is inconsistent with CECID's assertion that no loan repayments were due at that time. CECID Ex. F. CECID provides no reason to question Ms. Harris's sworn declaration reporting what the executive director told her. The absence of any loan repayment would impair the ability of the loan fund to function because CECID relied on repayments to generate new program income to make loans. ACF Ex. 1, at 6, 16 (grant announcement); ACF Ex. 2, at 28 (grant application).
- Consistent with CECID's failure to produce any statements or sworn testimony from loan recipients, CECID's records fail to include any contracts acquired by micro-enterprise businesses that would enable them to hire at least one person for a 12-month period. According to the grant announcement, such contracts "would be the measure of job creation through micro-enterprise development." ACF Ex. 1, at 8. Any existing contracts "should be readily available in view of the 'contract management program' that CECID maintained would be implemented to keep a database for tracking IT contracts in the San Antonio area." ACF Ex. 2, at 25. If CECID had made the loans for grant purposes, it should have been able to

show that the loans were used for micro-enterprise businesses that could create IT jobs.

- Even if CECID made the loans for grant purposes, CECID's records show that it did not make the loans in accordance with generally accepted sound business practices to demonstrate the reasonableness of any expenditures paid with federal funds, as required by OMB Circular A-122, Att. A ¶ A.3.b.

Accordingly, we conclude that CECID failed to establish that it implemented the revolving loan fund consistent with grant terms and conditions.

IV. CECID materially failed to comply with the terms and conditions of its grant and failed to demonstrate that it incurred allowable costs of providing activities required by its grant.

By failing to establish that it undertook the required grant activities of providing IT training to low-income individuals and implementing the revolving loan program to enable businesses to create such jobs, much less that it made any progress toward the grant objective of creating such jobs, CECID failed to show that it materially complied with the terms and conditions of the grant. *See, e.g., Native Village of Kotzebue*, DAB No. 2207, 16, 21 (2008) (grantee that “failed to perform timely the majority of scheduled project activities” under the grant “materially failed to comply with the terms of its grant”);⁶ *Tuscarora Tribe of North Carolina* at 11 (2002) (grantee failed to materially comply with special grant condition requiring that it establish shelters for homeless youth where it failed to serve *any* youth during the relevant time period).

The Board has long held that a grantee's long-recognized burden of documenting the existence, allowability and allocability of its expenditures of federal funds means that “the grantee has the burden to document that its expenditures of grant funds were made in support of grant objectives and in compliance with the terms and conditions of the grant.” *Tuscarora Tribe of North Carolina* at 10-11 (emphasis added), citing *New Opportunities for Waterbury, Inc.*, DAB No. 1512 (1995). CECID has failed to meet this burden because it has not credibly established that it conducted any of the activities required by its grant, most notably providing IT training to low-income individuals and loans to businesses in the manner required. Moreover, CECID did not establish that it made any

⁶ *Native Village of Kotzebue* addressed regulations governing grants to state, local and tribal governments in 45 C.F.R. Part 92 that, as relevant here, are substantively identical to the regulations governing grants to non-profit organizations at 45 C.F.R. § 74.62. In particular, both parts authorize the awarding agency to “[d]isallow . . . all or part of the cost of the activity or action not in compliance” when the grantee “materially fails to comply with any term of an award.” 45 C.F.R. §§ 74.62(a); 92.43(a).

progress towards achieving the grant's objectives of creating IT jobs for low-income individuals, and placing them in IT jobs.

The documentation in the record is unreliable and insufficient to establish that CECID reasonably incurred allowable costs in the course of providing the activities required by the grant in accordance with grant terms and conditions.

ACF's inability to locate, and CECID's failure or unwillingness to identify or produce, even a single individual who obtained an IT job or completed IT training, or a single business that created an IT job or otherwise used loan funds consistent with grant purposes and requirements, calls into question the credibility of the materials CECID submitted in support of its claim that it incurred allowable costs.⁷ It is simply not credible that CECID could have provided low-income individuals with IT training and jobs, and provided loans that created IT jobs, in the numbers CECID promised in its grant application and periodically reported, and yet fail to be able to produce any evidence that a single individual obtained or created an IT job through the grant program.

CECID has thus not established that any part of the cost of its grant activities was in compliance with the grant terms and conditions (including the Part 74 regulations cited in our discussion above), and has thus not met its burden of demonstrating that any of its claimed costs were allowable and allocable to its JOLI grant. 45 C.F.R. § 74.62(a).

Thus, the regulations authorize ACF to disallow the full amount of CECID's grant award. 45 C.F.R. § 74.62(a)(2).

V. CECID has had ample opportunity to document that it successfully undertook the activities required under its grant and that it made progress towards achieving the grant objective of creating IT jobs for low-income individuals.

CECID asserts that it has documentation supporting the completion of grant activities and job creation, in such great quantities that it would be prohibitively expensive for CECID to copy and mail the documentation to the Board. CECID faults ACF for apparently

⁷ It also calls into question the reliability of an evaluation report of CECID's grant program dated June 30, 2009, stating that the grant program "created 42 direct new jobs and 80 additional indirect jobs," but without providing the source of that information or otherwise establishing that any actual IT job creation occurred. CECID Ex. E, at 2. The report refers to participants in CECID's STEP program having attended focus groups and participated in interviews to discuss their experiences but does not identify any such individuals, and CECID has provided no supporting documentation underlying the report. Taken at face value, those reports of interviews and focus groups reflect poorly on CECID's failure to have proffered statements from even a single person who completed IT training or received an IT job, or who created an IT job, as a result of CECID's JOLI grant program.

choosing not to review this documentation during the two site visits in 2009 and 2010. CECID Reply at 6. CECID also accuses OCS of “gross incompetence” and having been “at sleep at the wheels” for failing to have uncovered and responded to problems in CECID’s administration of the grant during the grant period. CECID points out that ACF took no prior remedial actions available under Part 74, such as suspending or withholding payments or imposing special conditions on the grant. CECID Reply at 3-4.

We reject CECID’s attempt to shift its documentation failures to alleged oversight shortcomings by ACF. CECID’s attempts to blame OCS for incompetently monitoring CECID’s grant progress or administering the JOLI program are “meritless because the grantee is responsible for ensuring that federal grant funds are properly spent.” *Recovery Resource Center, Inc.*, DAB No. 2227, at 17 (2009) (rejecting assertion that disallowance would have been unnecessary had the awarding agency adequately monitored the grant); *see also Family Voices of the District of Columbia*, DAB No. 2409, at 11 (2011), citing *Puerto Rico Dept. of Health Services*, DAB No. 2385, at 27 (2011) (fact that federal agency fails to exercise oversight over federal funds or provide technical assistance to grantee does not relieve grantee of its obligation to administer its grant in compliance with all federal laws and grant conditions). Additionally, CECID reported on several occasions during the grant period that its STEP program was succeeding in accomplishing its grant objectives, so ACF would have had little reason to take remedial actions such as imposing special conditions on the grant. The first site visit in April 2009 was barely more than halfway through the three-year grant period. CECID thus had ample notice, prior to the disallowance, that it would be required to demonstrate that it had actually created jobs as it claimed.

In any event, CECID’s allegations of inadequate agency oversight are not supported by the record. Instead, the record amply demonstrates that ACF consistently sought information supporting CECID’s job-creation claims, and that CECID has just as consistently failed to supply this information, and at most provided summary information that could not be verified. For example, after the April 2009 site visit, ACF identified the “[f]ailure to create jobs for low-income individuals” as a key area of deficiency in CECID’s compliance with grant terms and conditions. ACF Ex. 5, at 3 (ACF letter to CECID, Sept. 28, 2009). ACF instructed CECID to identify program participants engaged in business or job creation, to provide evidence that activities were performed to create jobs for low-income individuals, and to provide “the policies and procedures on how participants are selected and determined to be low-income[.]” *Id.* CECID responded to those instructions in a letter that did not identify job creation activities and merely referenced the annual update of the HHS poverty guidelines published in the Federal Register on January 24, 2007. ACF Ex. 5, at 7. ACF determined that CECID’s response “did not provide tangible evidence of job creation for the STEP program aimed at creating or expanding [IT] businesses.” ACF Ex. 6, at 5 (ACF letter to CECID June 17, 2010). ACF explained that “[n]o documents were submitted to substantiate any of the creation of 14 businesses or 37 jobs through business expansion reported since October 1,

2008” and that “none of the four loans to business owners reported during the period April 1, 2009 – September 30, 2009, was documented.” *Id.* ACF again requested the identity of program participants engaged in business or job creation, both in the June 17, 2010 letter and an email sent on August 24, 2010 in preparation for the second site visit. *Id.*; ACF Ex. 6, at 17-18. During the second site visit in 2010, CECID provided the names of alleged program participants and lists of “new business start up” and “other program participants who abandoned opening a business and obtained IT or other employment.” However, these documents did not include telephone numbers. ACF Exs. 7; 16, at 2 (Harris Decl.).

After CECID appealed the disallowance, ACF asked CECID to provide records verifying that CECID had provided program and business activities, with contact information for individuals who had received or given training. ACF Ex. 13, at 1-2 (ACF letter, Aug. 9, 2011); ACF Br. at 10. As discussed earlier, CECID submitted contact information for 17 loan recipients and 80 persons alleged to have graduated from JOLI training programs, but ACF could not verify that any of these businesses or individuals had received the services required by the grant program, or that they had been involved in the receipt or creation of any IT jobs. In its Reply Brief, CECID claims that “there is [a] vast amount of evidence of documented allowable costs” incurred in administering the JOLI grant. CECID Reply Br. at 3. However, CECID did not submit even examples of such documents. Nor did CECID explain how they would show CECID incurred allowable costs in administering the grant.

Notably, in response to ACF’s repeated reports that it has been unable to verify that anyone obtained an IT job or completed IT training or used loan funds to expand or create an IT business, CECID has failed to proffer the statement of any such low-income individual or business owner. Its failure to do so, and its efforts to blame ACF for allegedly failing to seek out information on CECID’s grant with sufficient vigor, indicates that CECID misapprehends its burden as a recipient of federal grant funds. ACF was not required to verify CECID’s claims to have created IT jobs, although the record indicates that ACF, through OCS, did make efforts to do so. Rather, it was incumbent on CECID, as a recipient of federal grant funds, to document that it spent those funds on allowable costs incurred in providing the activities required under its grant. As discussed, CECID has not done so, despite numerous opportunities and requests for information by ACF. Moreover, none of its allegations regarding OCS conduct of the review, even if true, would excuse CECID’s own failure to provide any reliable documentation that it engaged in activities required to achieve the objectives of its grant.

Accordingly, we conclude that CECID has had ample opportunity to document that it successfully undertook the activities required under its grant and that it made progress towards achieving the grant objective of creating IT jobs for low-income individuals.

VI. CECID's explanations for its failure to document that low-income individuals completed IT training or obtained IT jobs, or that any IT jobs were created, as a result of the grant program does not provide a basis to reverse any of the disallowance.

CECID offers several explanations for ACF's inability to locate a single individual who obtained an IT job or completed IT training, or any business that created IT jobs, through the grant program. Most significantly, CECID blames OCS. CECID alleges that OCS staff had a "Gestapo mentality," employed "Gestapo tactics" and harassed CECID program participants who were then unwilling to be interviewed. CECID Br. at 3-6. CECID characterizes its program participants as "the hard to place and hard to find" with issues including drug and alcohol abuse, low educational levels, behavioral problems and "ongoing (criminal or civil) legal entanglements" and who are wary of "government people." *Id.* at 3-5. CECID also accuses OCS of having an "ulterior objective" of undermining the STEP program, and of causing an "unnecessary delay" in providing funds that hindered the loan program. *Id.* at 3, 7-8. And, notwithstanding CECID's claim to have provided the IT training and jobs proposed in its grant application, CECID asserts that its efforts were hampered by the economy and the characteristics of its clients. *Id.* at 3.

These arguments are without merit. CECID has not explained what it means by "Gestapo tactics;" nor has it proffered any evidence of intimidating or other inappropriate behavior by OCS staff.⁸ CECID Reply at 9. CECID's claim that program participants were wary of OCS staff, even if accepted as true, does not explain why CECID itself could not have contacted individuals to whom it provided training and proffered their statements or testimony. CECID claims that some of those individuals reaped substantial benefits from CECID's JOLI grant program, in the form of IT training certifications and IT jobs. It is not credible that persons who benefitted as a result of CECID's services would be uniformly unwilling to acknowledge CECID's assistance, even to CECID. CECID's claim that it had a "hard time keeping up with changes" in the contact information for program participants and that they "wanted to be left alone" does not credibly account for CECID's failure to have proffered evidence from even a single individual who received IT training or jobs, or to have produced any such individual to be interviewed by OCS. CECID Reply Br. at 9. CECID's unsupported claim that OCS harassed program participants does not account for why CECID could not proffer any statements from the professionals who allegedly provided IT training. In addition, CECID's claim that low-

⁸ Prior to the second site visit from August 31 through September 2, 2010, CECID requested that Mr. Shanklin be removed from the site visit team on the ground that he had "caused irreversible harm" to CECID's program. ACF Ex. 6, at 10 (CECID letter, July 30, 2010). While the record does not contain a direct response from ACF to CECID's allegations, Mr. Shanklin did not participate in the second site visit. The findings from the 2010 site visit are consistent with those from the 2009 site visit.

income program participants were wary of government representatives does not credibly explain why OCS could not reach, and CECID did not produce, any of the owners or managers of the 17 San Antonio businesses to verify the creation of IT jobs through assistance from the revolving loan fund. Finally, CECID does not explain how the poor state of the economy justifies its failure to demonstrate that it provided the technical and financial assistance consistent with the terms of the grant.

Accordingly, CECID's explanations do not provide a basis to reverse any of the disallowance.

Conclusion

For the reasons discussed above, we sustain the disallowance in full.

/s/
Judith A. Ballard

/s/
Sheila Ann Hegy

/s/
Stephen M. Godek
Presiding Board Member