

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

William Smith Sr. Tri-County Child Development Council, Inc.  
Docket No. A-13-80  
Decision No. 2549  
December 13, 2013

**DECISION**

William Smith Sr. Tri-County Child Development Council, Inc. (WSSTCCDC) appealed the May 1, 2013 determination of the Administration for Children and Families (ACF) disallowing \$162,000 charged to American Recovery and Reinvestment Act (ARRA) funds ACF awarded WSSTCCDC for the period November 1, 2009 through September 29, 2011. The ARRA grant award, which was made to expand Early Head Start services, included a special condition specifying that \$162,000 was to be used to purchase six vans and requiring ACF's prior approval to use the funds budgeted for the vans for any other purpose. ACF disallowed this amount on the ground that WSSTCCDC failed to obtain ACF's approval before using the funds for other costs.

WSSTCCDC does not dispute that it failed to obtain the required prior approval. However, WSSTCCDC asserts that it used the funds for other costs, salaries and fringe benefits, that were in an approved budget category and were reasonable and allocable to the award and argues that ACF should have granted retroactive approval for this use of the funds. WSSTCCDC also asserts that it used \$141,000 in non-federal funds to purchase the vans in November 2011 and argues that the disallowance should be offset by this amount.

For the reasons discussed below, we conclude that these arguments as well as others advanced by WSSTCCDC have no merit. Accordingly, we sustain the disallowance in full.

**Legal Background**

Head Start is a national program that provides comprehensive health, educational, nutritional, social, and other services primarily to low-income children, ages three to five, and their families. 42 U.S.C. § 9831; 57 Fed. Reg. 46,718 (Oct. 9, 1992). Early Head Start “provides low-income pregnant women and families with children from birth to age 3 with family-centered services that facilitate child development, support parental roles, and promote self-sufficiency.” 45 C.F.R. § 1304.3(a)(8). These programs are

administered by ACF, an operating division of the Department of Health and Human Services (HHS). ARRA provided additional funding for the Head Start program, including Early Head Start expansion. Pub. L. No. 111-5, Tit. VIII (2009); *see also* Head Start Program Instruction 09-06, May 12, 2009; available at [http://eclkc.ohs.acf.hhs.gov/hslc/standards/Pis/2009/resour\\_pri\\_006\\_040209.html](http://eclkc.ohs.acf.hhs.gov/hslc/standards/Pis/2009/resour_pri_006_040209.html).

The terms and conditions of WSSTCCDC's ARRA award expressly made applicable to the award the uniform administrative requirements for grant awards for HHS grants to non-profit organizations, at 45 C.F.R. Part 74.<sup>1</sup> *See* Ex. W-5B.<sup>2</sup> Part 74 provides in relevant part that “[w]here a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period. . . .” 45 C.F.R. § 74.28. Part 74 also incorporates the principles in Office of Management and Budget (OMB) Circular A-122 (now codified at 2 C.F.R. Part 230) for determining allowable costs under awards to non-profit organizations. 45 C.F.R. § 74.27(a). Relevant provisions in Appendix A of Part 230 include paragraph A.2.a. (allowable cost must “[b]e reasonable for the performance of the award and be allocable thereto”); paragraph A.3 (cost is reasonable if “it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs”); and paragraph A.4.a. (cost is allocable to an award “in accordance with the relative benefits received”).

Costs must also be “adequately documented.” 45 C.F.R. Part 230, App. A, ¶ A.2.g. A grantee must have in place 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). The cost principles require specifically that “[t]he distribution of salaries and wages to awards must be supported by personnel activity reports” that: (1) “reflect an after-the-fact determination of the actual activity of each employee”; (2) “account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization”; (3) are “signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee [and indicate] that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports”; and (4) are “prepared at least monthly” and “coincide with one or more pay periods”. 2 C.F.R. Part 230, App. B, ¶ 8.m.(2).

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<sup>1</sup> The regulation at 45 C.F.R. § 1301.10(a), which makes Part 74 applicable to Head Start grants, is also incorporated by reference in the terms and conditions of the ARRA grant.

<sup>2</sup> The record includes Exhibits W-1A – W-11A, submitted by WSSTCCDC; W-13A – W-19A, submitted by ACF; and W-20 – W-24, submitted by WSSTCCDC. There is no Exhibit W-12A. There are several exhibits between Exhibit W-7B and Exhibit W-8A that do not follow this numbering scheme. WSSTCCDC labelled some pages of the same document as separate exhibits.

The Board has consistently 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).” *Suitland Family & Life Dev. Corp.*, DAB No. 2326, at 2 (2010). “Once 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.” *Northstar Youth Servs., Inc.*, DAB No. 1884, at 5 (2003).

### **Case Background**

WSSTCCDC is a non-profit corporation that receives federal, state and local grants to provide early childhood development programs, including both Head Start and Early Head Start, in three Texas counties. WSSTCCDC Br. at 3.

In November 2009, ACF awarded WSSTCCDC \$1,510,907 in ARRA funds to expand services to a total of 104 infants, toddlers and pregnant women in seven service areas. Exs. W-5A, W-5B. This amount does not include a 20% non-federal share of \$377,727 shown in the Financial Assistance Award notice. Ex. W-5A. The award notice specifies a budget period of November 1, 2009 through September 29, 2010 and a project period of November 1, 2009 through September 29, 2011. *Id.* The term “project period” means the “period established in the award document during which HHS awarding agency sponsorship begins and ends.” 45 C.F.R. § 74.2. Under the project period system of funding, “a project may be approved for a multi-year period, but generally is funded in annual increments known as ‘budget periods.’” 2007 HHS Grants Policy Statement (<http://www.acf.hhs.gov/sites/default/files/fysb/hhsgps107.pdf>) at I-15.<sup>3</sup> The award states that “[f]uture support is anticipated” and that for the September 30, 2010 through September 29, 2011 budget period, “the approved ongoing funding level for Early Head Start operations is \$1,382,192 to serve 104 infants, toddlers and pregnant women, and the training and technical assistance allocation is \$34,055.” Ex. W-5B.<sup>4</sup> WSSTCCDC nevertheless asserts that the total approved budget of

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<sup>3</sup> The HHS Grants Policy Statement is expressly made applicable by the award notice. Ex. W-5A.

<sup>4</sup> There is no contemporaneous award document for a second budget period in the record. ACF sent a letter captioned “Closeout Letter for ARRA Recipients” to WSTCCDC in June 2012 which states that a “Financial Assistance Award indicating final closeout of the grant is enclosed.” Ex. W-18A at 1. The enclosed Notice of Award, signed by ACF in June 2012, specifies a budget period of September 30, 2010 through September 29, 2011, and shows a “Total Approved Budget” of \$1,430,302 plus a 20% non-federal share of \$357,576. *Id.* at 2.

\$1,510,907 shown on the November 2009 award notice was for the full project period. WSSTCCDC Reply Br. at 10. We assume for purposes of this decision that this assertion is correct; however, the result here would be the same whether or not WSSTCCDC received additional ARRA funds for a second budget period.

The approved budget shown on the award notice includes \$803,000 for personnel, \$100,000 for fringe benefits and \$222,000 for equipment, among other line item costs. Ex. W-5A. The award notice states in pertinent part that the award—

includes \$222,000 for the grantee to purchase equipment for Early Head Start to include \$50,000 for two (2) Dietary cargo vans, \$112,000 for four (4) seven passenger vans (for content area monitoring), \$60,000 for five (5) playground equipment structures. These funds may not be used for any other purpose without prior written approval from the Regional Office.

Ex. W-5B.

An independent audit of WSSTCCDC for the year ended February 28, 2011 found that WSSTCCDC failed to obtain prior approval to expend funds totaling \$222,000. According to the auditors, WSSTCCDC did not use these funds to purchase vans and playground equipment “as approved in the grant agreement” for “ARRA Early Head Start,” and “[p]rocedures in place to ensure that HHS approval was obtained to expend funds for other cost [*sic*] in lieu of purchasing the above vehicles and playground equipments [*sic*] were not followed.” Ex. W-13A at 24.

The HHS Office of the Inspector General (OIG) advised WSSTCCDC in a February 10, 2012 letter that it had completed its initial review of the independent audit report. Ex. W-14A, at 1. With respect to the costs for which WSSTCCDC had not obtained prior approval, the OIG recommended that “any unallowable costs be determined and returned.” *Id.* at 4. The OIG’s letter directed WSSTCCDC to send its response to ACF’s Assistant Regional Administrator for Fiscal Operations within 30 days. *Id.* at 1. In its March 8 response, WSSTCCDC stated:

The playground equipment was purchased, however, [WSSTCCDC] did not purchase the (2) Dietary Cargo Vans (\$50,000) and (4) seven passenger vans for content area monitoring totaling \$162,000. The \$162,000 was used to purchase classroom supplies that were not budgeted for in the Grant Applications. In the future we will do a budget amendment and request to move the funds to the category where the funds are needed.

Ex. W-15A at 2.

In a May 1, 2013 letter to WSSTCCDC, the Director of ACF's Office of Financial Services noted WSSTCCDC's response to the audit and stated that "\$162,000 has been disallowed resulting from [the audit] finding[.]" Ex. W-1B. ACF disallowed only the amount budgeted for the vans, and not the \$60,000 that WSTCCDC claimed was used to purchase playground equipment. WSSTCCDC timely appealed the disallowance, stating in its June 7, 2013 "Request for Appeal" that it was disputing \$162,000 "and all interest and penalties." 6/7/13 letter at 1.

In its June 26, 2013 letter acknowledging receipt of the notice of appeal, the Board asked WSSTCCDC to state in its brief whether it had requested that ACF grant retroactive approval for the purchase of the vans. The Board also asked ACF to address in its brief whether it has authority to grant retroactive approval and, if so, whether it would entertain a request for retroactive approval here. 6/26/13 letter at 4.

WSSTCCDC's Executive Director submitted an undated request for retroactive approval of its purchase of the vans "on or about September 9, 2013." WSSTCCDC Reply Br. at 12-13. ACF stated in its September 23, 2013 Brief in Support of Disallowance (ACF Response Br.) that it "is denying the grantee's request for retroactive approval to revise its budget." ACF Response Br. at 9.

### Analysis

#### **WSSTCCDC has not shown that ACF abused its discretion in denying retroactive approval to rebudget the \$162,000 budgeted for vans to personnel and fringe benefits.**

As noted, ACF based the disallowance on the audit finding that WSSTCCDC failed to obtain prior approval to use \$162,000 budgeted for vans for other costs. WSSTCCDC does not dispute that its grant award required prior approval and that it used the funds for other costs without prior approval. However, WSSTCCDC takes the position that retroactive approval is justified. According to WSSTCCDC, it used the funds to pay additional salaries and fringe benefits for the expanded Early Head Start program funded by its ARRA grant for the period November 1, 2009 through September 29, 2011. WSSTCCDC's request for retroactive approval to rebudget the funds included a "justification" that states in principal part:

The Project Period started on 11/01/2009. Adequate ARRA funds were not available for Personnel and Fringe Benefits at that time. The Grant Writer miscalculated the correct amount of funds needed for salaries and wages for the entire period of the grant. Therefore the project started out with a deficit of approximately \$222,000.00 in salaries and wages. The Grantee needs to transfer funds from the “Equipment” category to the category of “Personnel and Fringe Benefits.”

Exhibit “A,” 1<sup>st</sup> page (follows Ex. W-7B) (Budget Amendment Request Form).<sup>5</sup>

ACF denied the request for retroactive approval on the ground that WSSTCCDC did not explain “why it no longer needed the \$162,000 for the vans and needed an additional \$222,000 for salaries.” ACF Response Br. at 9. ACF notes that the ARRA grant budgeted a total of \$903,000 for personnel and fringe benefits, yet WSSTCCDC “fails to explain why this amount was inadequate.” *Id.* at 10. ACF also asserts that WSSTCCDC “failed to meet any of the basic requirements listed in OMB [Circular] A-122, App. B., ¶ 8-m(2) for documenting charges to grants for salaries.” *Id.* at 11.

HHS Grants Policy Directive 3.05, in effect since August 2000, authorizes awarding agencies to “entertain” a request for retroactive approval of costs requiring prior approval and to “grant approval retroactively.” GPD 3.05 at 3.<sup>6</sup> The directive further states: “Such a request must be examined on its merits, including whether the requested action is permissible under the governing statute, regulations, and policies (allowability) and, if applicable, whether it meets the cost principle tests of reasonableness and allocability.” *Id.* The Board applies an abuse of discretion standard in reviewing agency denials of requests for retroactive approval of budget revisions where agency policy or regulation expressly authorizes the agency to grant retroactive approval in lieu of prior approval. *See Inter-Tribal Council of Cal.*, DAB No. 1418, at 13 (1993) (“[W]hile an agency has considerable discretion in granting or denying retroactive approval, that discretion is not unbounded and the agency must state, in more than conclusory terms, the basis for its decision. . . . The agency ‘may not deny retroactive approval based on unsubstantiated conclusions or on bases so insubstantial that the decision fairly can be described as

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<sup>5</sup> WSSTCCDC’s letter accompanying the Budget Amendment Request Form states that WSSTCCDC “misunderstood the rules and regulations pertaining to budget amendment requests regarding ‘Equipment’ as shown in the Original Approved Budget.” Ex. W-6B. WSSTCCDC does not explain how it could have misunderstood the express requirement in the ARRA grant award for prior approval to use the funds budgeted for the vans for other purposes.

<sup>6</sup> The Grants Policy Directives “set forth policies and guidance to be adhered to by all HHS grant awarding agencies.” They are available at <http://www.hhs.gov/asfr/ogapa/aboutog/ogpoe/gpdhome.html>. The Grants Policy Directives replaced the HHS Grants Administration Manual.

capricious.”); *see also River East Economic Revitalization Corp.*, DAB No. 2087, at 7 (2007) (“The Board has routinely applied this abuse of discretion standard to those waiver or prior approval decisions that are expressly authorized by agency regulations or policies.”) ACF acknowledges that an abuse of discretion standard applies to its decision whether to grant retroactive approval of the costs in question here. ACF Response Br. at 8-9, citing, *inter alia*, *Inter-Tribal Council of Cal.*

For the reasons explained below, we conclude that ACF did not abuse its discretion in denying WSSTCCDC’s request for retroactive approval to use the funds budgeted for the vans for other purposes. WSSTCCDC has not disputed the assertion in ACF’s response brief that WSSTCCDC did not meet the requirement for personnel activity reports in paragraph 8.m.(2) of 2 C.F.R. Part 230, Appendix B, nor does WSSTCCDC assert that this requirement did not apply here. Thus, the salary costs are not allowable because WSSTCCDC failed to meet its burden of documenting that its costs are allowable. Since the salary costs are unallowable, fringe benefits paid based on these salary costs are unallowable as well.

In addition, the cost principles require that a cost be “reasonable for the performance of the award” in order to be allowable. 2 C.F.R. Part 230, App. A, ¶ A.2.a. A cost is reasonable “if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs.” *Id.* ¶ A.3. WSSTCCDC argues, in effect, that the additional salaries and fringe benefits were reasonable costs because the amount of salaries and fringe benefits in the originally approved budget was inadequate and the result of a miscalculation by the “Grant Writer.”<sup>7</sup> As ACF observes, however, WSSTCCDC fails to explain why the \$903,000 already budgeted for personnel and fringe benefits costs was inadequate. ACF Response at 10. Indeed, WSSTCCDC does not indicate whether the additional salaries and fringe benefits were for new positions or represented increased compensation for individuals in existing positions, much less explain why a prudent grantee would have incurred the additional costs. Thus, there is no basis on which we can find that the additional costs were reasonable.<sup>8</sup>

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<sup>7</sup> WSSTCCDC’s grant application actually requested more than the amounts in the award notice for personnel and fringe benefits, but shortly before the award was signed, WSSTCCDC submitted a revised budget showing the lower amounts that appear in the award notice. Ex. W-17A at 1-3, 14. This seems to undercut WSSTCCDC’s claim that it underestimated the amount needed for salaries and fringe benefits.

<sup>8</sup> ACF also appears to question whether WSSTCCDC even used the \$162,000 for salaries and fringe benefits in light of WSSTCCDC’s earlier representation in response to the audit report that it used these funds for classroom supplies. ACF Response Br. at 11-12. We need not resolve this question because WSSTCCDC now claims only that the funds were used for salaries and fringe benefits (and yet still fails to demonstrate that these were allowable costs). ACF also notes that WSSTCCDC requested retroactive approval to rebudget \$222,000 (\$162,000 plus \$60,000) from equipment to salaries and fringe benefits although it previously said it spent \$60,000 for playground equipment. *Id.* at 12. However, only the \$162,000 ACF disallowed is at issue here.

Because WSSTCCDC did not establish that the additional salaries and fringe benefits were allowable costs, ACF's denial of WSSTCCDC's request for retroactive approval for rebudgeting to cover these costs did not constitute an abuse of discretion.

**WSSTCCDC has not shown that it is entitled to an offset against the disallowance in the amount of the \$141,000 in non-federal funds it used to purchase six vans for its Early Head Start program in November 2011.**

WSSTCCDC asserts that in November 2011 it purchased six vans with \$141,585.86 in non-federal funds in excess of its required 20% match and that the vans “have been and are used exclusively for Early Head Start and authorized federal purposes.” WSSTCCDC Br. at 12; WSSTCCDC Reply Br. at 8. (According to WSSTCCDC, it was able to negotiate a lower price for the six vans than the \$162,000 provided by the ARRA grant. WSSTCCDC Reply Br. at 8.) WSSTCCDC submitted the October 7, 2013 declaration of its Executive Director stating that WSSTCCDC “purchased ‘equipment’ in the form of ‘Vans’ specifically for grant programmatic purposes” and that the “‘equipment’ (VANS) have been used for the ARRA Early Head Start Expansion Grant programmatic purposes from November 11, 2011 through this date.” Ex. W-20. The Executive Director’s declaration refers to other exhibits submitted by WSSTCCDC consisting of five Vehicle Buyer’s Orders dated November 17, 2011—two orders for a “truck” (a 2011 Chevrolet Express) costing \$24,942.78, and three orders for a “car” (a 2012 Dodge Journey) costing \$22,920.08. Exs. “4a” – “4e” (immediately preceding Ex. W8-A). Although the Vehicle Buyer’s Orders do not describe the vehicles purchased as vans, and document only five vehicle purchases, ACF found in an on-site review of WSSTCCDC’s Early Head Start program conducted November 11-16, 2012 that WSSTCCDC purchased two cargo vans and four passenger vans on November 17, 2011. Exs. W-4A, W-4G. WSSTCCDC also submitted documentation for a November 17, 2011 loan of \$141,565.88 from Unity National Bank for “vehicle purchase.”<sup>9</sup> Ex. “4” (immediately preceding Exs. “4a” – “4e”).

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<sup>9</sup> In the on-site review, ACF found that the George Foundation later awarded WSSTCCDC a \$150,000 grant to assist with the purchase of the vehicles. Ex. W-4G. The review further found that WSSTCCDC used funds from the Head Start Operating Account from March through June 2012 and the Early Head Start Operating Account from July through November 2012 to make payments to Unity National Bank on the loan agreement for the “vehicle purchase.” *Id.* This appears to undercut WSSTCCDC’s position that it used non-federal funds to purchase the vans, unless George Foundation grant funds equal to the amount of operating funds used were deposited in either of the accounts from which the loan was repaid.



WSSTCCDC argues that “[s]ince at least \$141,000 for ‘equipment’ required can be accounted for, then the ACF should give [WSSTCCDC] an off-set and credit of \$141,000 thus reducing the amount of Disallowance to \$21,000.00.” WSSTCCDC Br. at 12. WSSTCCDC also quotes *Central Piedmont Action Council, Inc.*, DAB No. 1916 (2004) in part as follows:

The Board has recognized that a grantee may reduce or offset a disallowance by documenting that it incurred unclaimed, allowable and allocable costs that it paid for with its own funds. [citations omitted] In effect, a grantee may substitute, for unallowable costs, allowable costs for which it did not claim federal funding. . . .

WSSTCCDC Reply Br. at 8, quoting DAB No. 1916, at 7.

This argument is without merit. We conclude that WSSTCCDC has not shown that it is entitled to an offset for the cost of the vans it purchased. As WSSTCCDC recognizes, to be available for an offset against the disallowance, the costs incurred for the vans must be “allocable costs.” The cost principles provide that a cost is allocable to an award “in accordance with the relative benefits received.” 2 C.F.R. Part 230, App. A, ¶ A.4.a. The Board has previously held that the “term ‘benefit,’ as used in connection with the concept of allocability, derives from accounting principles that the costs must relate not only to cost objectives, but to funding periods as well.” *S.A.G.E. Communications Servs.*, DAB No. 2481, at 5 (2012), quoting *Delta Foundation, Inc.*, DAB No. 1710, at 37 (1999). “Therefore, expenditures for benefits that accrue beyond a grant period necessarily are not allocable to the grant.” *Id.*; see also *Arlington Community Action Program, Inc.*, DAB No. 2141, at 2 (2008) (“[E]xpenditures incurred outside their grant periods necessarily are not allocable to the grants and are subject to disallowance.”); 45 C.F.R. § 74.28. Thus, even if WSSTCCDC continued to use the vans for its Early Head Start program, the cost of the vans was not allocable to the Early Head Start expansion program funded by the ARRA grant because the vans were purchased after the end of the grant’s project period.

WSSTCCDC nevertheless appears to argue that the costs were allocable to that program because the vans were purchased “within the legally permitted time for liquidation of obligations.” WSSTCCDC Reply Br. at 9. Under 45 C.F.R. § 74.71(b), a grantee must generally “liquidate all obligations incurred under the award not later than 90 calendar days after the funding period[.]” This provision is part of the procedures for closeout of a grant award and is inapposite here. A cost that is not allocable to an award in the first instance does not become allocable merely because the obligation is liquidated within the 90-day period specified in section 74.71(b). In any event, WSSTCCDC has not established that the cost of the vans was an obligation “incurred under the award” within the meaning of this section. Section 74.2 of 45 C.F.R. provides that “‘Obligations’ means the amounts of orders placed, contracts and grants received and similar transactions during a given period that require payment by the recipient during the same

or a future period.” WSSTCCDC alleges that it “was making arrangements and commitments to purchase the equipment before the end of the project’s grant period and up to [the] grant project’s liquidation period.” WSSTCCDC Reply Br. at 9. However, the only documentation in the record arguably showing an obligation as defined in section 74.2 is the November 17, 2011 Vehicle Buyer’s Orders.

At the same time WSSTCCDC requested retroactive approval to use the funds budgeted for the vans for other purposes, WSSTCCDC requested retroactive approval of a two-month no-cost extension of the project period for its ARRA grant to November 20, 2011. Ex. “B” (following Ex. “A” after Ex. W-7B) (Project Amendment Request Form); WSSTCCDC Br. at 11. According to WSSTCCDC, a no-cost extension would have given it “time to correct the unauthorized transfer [of funds budgeted for the vans to personnel and fringe benefits] by purchasing the [vans] during the ‘extended’ grant period.” Ex. W-6B; *see also* Ex. “B.”<sup>10</sup> ACF denied the request for retroactive approval of a no-cost extension, citing the same reasons it gave for denying the request for retroactive approval for rebudgeting. ACF Response Br. at 13. ACF also points out that the 2007 HHS Grants Policy Statement indicates that the purpose of a no-cost extension is to provide additional time to complete a project- or program-related activities, whereas WSSTCCDC sought the no-cost extension merely to retroactively bring its purchase of the vans within the project period. *Id.*, citing Ex. W-16A (excerpt from Grants Policy Statement) at 9.

The Board has applied an abuse of discretion standard in reviewing agency decisions denying permission to use funds outside the grant period, such as the denial of a request for a no-cost extension of the grant. *See River East Economic Revitalization Corp.* at 8 , citing, *inter alia*, *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404, at 15-16 (1993) (finding that the agency reasonably denied a request for a no-cost extension made during the appeal of a disallowance of expenditures incurred outside the grant period). We find no abuse of discretion here. WSSTCCDC did not give any programmatic reason for needing the no-cost extension, such as increasing the number of pregnant women and children served. Instead, as ACF observes, WSSTCCDC requested the extension after-the-fact solely in an attempt to have the cost of the vans treated as allocable, allowable costs of the ARRA grant that could be offset against the disallowance. In addition, ACF could reasonably take into account in considering the extension request the fact that WSSTCCDC gave inconsistent reasons for not purchasing the vans during the project

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<sup>10</sup> WSSTCCDC’s request for the no-cost extension also stated that an extension would give it “time to properly request prior approval to move the fund for ‘Equipment’ to the correct Budget Category of ‘Personnel and Fringe Benefits[.]’” Ex. “B.” However, since WSSTCCDC had already incurred the unallowable salaries and fringe benefits, it would have been impossible for WSSTCCDC to request “prior approval” to change its budget. *See* 45 C.F.R. § 74.2 (defining “prior approval” as “written approval by an authorized HHS official evidencing prior consent”).

period with the grant funds budgeted for that purpose. ACF also could reasonably question whether, if the cost of the vans were allowable as an offset by virtue of an extended project period, that would result in federal funds being charged twice for the vans inasmuch as WSSTCCDC has already used grant funds to make loan payments. *See note 9 infra.*

WSSTCCDC argues further that it is entitled to an “offset” “for the unused fund left from the Original Award of \$1,510,000.” WSSTCCDC Reply Br. at 16 (emphasis in original). According to WSSTCCDC, it spent \$1,430,362 of the award amount, leaving unused funds of \$79,638. *Id.* at 11, citing Ex. W-18A (award notice indicating final closeout of grant).<sup>11</sup> This argument has no merit. Any unobligated fund balance in this amount may not be used to cover costs for which funds were not timely obligated during the project period. 45 C.F.R. § 74.28. Moreover, any funds that were drawn down and not timely obligated by WSSTCCDC were required to be “promptly” returned to the U.S. Treasury following grant closeout. 45 C.F.R. § 74.71(d) (requiring an award recipient to “promptly refund any balances of unobligated cash that HHS has advanced or paid and that is not authorized to be retained by the recipient for use in other projects”).

**ACF did not deny due process to WSSTCCDC in issuing the disallowance.**

WSSTCCDC’s failure to use the ARRA funds budgeted for vans for that purpose was not only the basis for the disallowance in question here but was also the basis for a finding of noncompliance in ACF’s report on the on-site monitoring review of WSSTCCDC’s Head Start and Early Head Start programs conducted by ACF in November 2012. ACF found that WSSTCCDC’s failure to conform to the terms and conditions of the award constituted noncompliance which, if not corrected, would constitute a deficiency. Exs. W-4A–W-4G. ACF gave WSSTCCDC 120 days following receipt of the February 4, 2013 review report to correct this and other areas of noncompliance. Ex. W-4A; Ex. W-4G, 2<sup>nd</sup> page. WSSTCCDC argues that it was denied due process because the disallowance letter, dated May 1, 2013, was issued before this 120-day period expired. WSSTCCDC Br. at 6-7.

WSSTCCDC’s argument confuses two separate processes. The disallowance arose from an independent audit conducted pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) and revised OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) (made applicable by 45 C.F.R. § 74.26(a)).

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<sup>11</sup> Citing the same exhibit, WSSTCCDC elsewhere states that the “Closeout . . . ended with \$59,000.00 less money spent (\$1,488,333) than the original award of \$1,510,000[.]” WSSTCCDC Reply Br. at 13. The closeout award notice in the exhibit shows a “Total Approved Budget” of \$1,430,302, which is different from both of the amounts identified in WSSTCCDC’s reply brief. In addition, the “Total Approved Budget” on the original award is \$1,510,907, not \$1,510,000 as stated by WSSTCCDC. *See* Ex. W-5A. These discrepancies are not material since we conclude that there is no basis for a reduction of the disallowance in the amount of any unobligated funds.

*See* Ex. W-13A, at 11. Under those provisions, non-federal entities that expend \$500,000 or more in a year in federal awards must have a single, comprehensive financial and compliance audit of their programs for that year. 31 U.S.C. § 7502(a)(1)(A); 68 Fed. Reg. 38,401 (June 27, 2003) (revising the threshold amount from \$300,000 to \$500,000). The purpose of an audit is to identify any weaknesses in financial operations and questionable costs, whereas a Head Start on-site review is designed to determine whether a Head Start agency is in compliance with the Head Start performance standards. Head Start Act § 641A(c). ACF is required to give a Head Start grantee an opportunity to correct an area or areas of noncompliance identified in an on-site review. 45 C.F.R. § 1304.61(a). If uncorrected, the noncompliance becomes a deficiency which, if uncorrected, is a basis for termination of the Head Start grant. *Id.* §§ 1304.61(b), 1303.14(b)(4); Head Start Act § 641A(e)(1). However, the opportunity to correct noncompliance pursuant to the Head Start regulations does not provide a legal basis for avoiding a disallowance, even if the disallowance arises from the same facts as the noncompliance. Moreover, ACF had not made a disallowance determination at the time it issued the on-site review report, which stated that the “matter will be referred to the Office of Administration, Administration for Children and Families, to determine whether a disallowance is appropriate.” Ex. W-4G. Thus, the timing of the disallowance in relation to the corrective action period specified in the review report did not result in depriving WSSTCCDC of due process.

WSSTCCDC further argues that it was not given an opportunity “to exercise [its] rights” under Grants Policy Directive 4.01, HHS Transmittal 06.01” (available at <http://www.hhs.gov/asfr/ogapa/aboutog/ogpoe/gpd4-01.pdf>). WSSTCCDC Br. at 6. WSSTCCDC quotes from the directive’s statements that “[t]he letter advising the grantee of an audit disallowance or other findings requiring corrective action generally must be signed by the audit resolution official, or the CGMO [Chief Grants Management Officer] or designee” and that “the letter constitutes the final decision of the OPDIV [Operating Division] and may be appealed by the recipient under 45 CFR part 16 or other applicable appeals procedures.” *Id.* at 7. However, WSSTCCDC does not point to any basis for finding that the person who signed the disallowance letter was not authorized to do so. Moreover, the disallowance letter gave WSSTCCDC notice of its right to appeal to the Board under 45 C.F.R. Part 16. Accordingly, WSSTCCDC has not shown any basis for finding a deprivation of any due process rights accorded by Grants Policy Directive 4.01.

**The Board has no authority to consider WSSTCCDC’s requests for a waiver of interest on the disallowance and for a payment plan.**

In its notice of appeal, WSSTCCDC requested that the Board waive the interest that will be assessed on the disallowed funds in the event the disallowance is sustained. The Board has previously held that it does not have the authority to waive any interest that may accumulate on a disallowance. *See, e.g., Wis. Dep’t of Workforce Dev., DAB No. 2137, at 11 (2007), citing White Mountain Apache Tribe, DAB No. 1787, at 5 (2001)*

(“Interest itself is not part of the disallowance. Once the Board concludes that there is a valid debt, the Federal Claims Collection Act regulations at 45 C.F.R. Part 30 provides a separate process for the Secretary . . . to determine how the debt should be repaid.”). The Board’s letter acknowledging receipt of the appeal cited that holding and stated that if WSSTCCDC did not think the holding would preclude the Board’s granting a waiver here, it should explain why in its brief. 6/26/13 letter at 4. WSSTCCDC’s brief provides no such explanation but requests that the Board allow WSSTCCDC “to pay any amount of disallowance and/or interest assessed in the form of ‘installment payments’ over a period of months or years.” WSSTCCDC Br. at 14. These matters are governed by the regulations at Part 30 as well as 45 C.F.R. § 74.73 (“Collection of amounts due”). Accordingly, they are also outside the scope of the Board’s authority.

### **Conclusion**

For the foregoing reasons, we uphold the disallowance in full.

\_\_\_\_\_/s/  
Judith A. Ballard

\_\_\_\_\_/s/  
Stephen M. Godek

\_\_\_\_\_/s/  
Sheila Ann Hegy  
Presiding Board Member