

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Grant Management
	CORRESPONDENCE SYMBOL OMAS/OGM
	DATE May 16, 2016

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 23-15

TO: STATE WORKFORCE AGENCIES
ALL GRANT RECIPIENTS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: The Process for Making High Risk Determinations after Award and the Associated Risk Mitigation Procedures

1. **Purpose.** To provide the Department of Labor (DOL), Employment and Training Administration's (ETA's) policy and guidance for determining a "high risk" recipient (non-Federal entity) after Federal award and to describe the process that will be used to address situations when a non-Federal entity (hereafter referred to as a "recipient") is deemed to be at high risk of non-compliance with the Federal award.

2. **References.**

- 2 CFR 200
- 29 CFR 95.14
- 29 CFR 97.12

3. **Background.** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR 200 describe methods for addressing risk of unsuccessful performance at three points in the Federal award lifecycle:

- 1) *Pre-Award Phase* – conducting a review of risk posed by applicants [2 CFR 200.205];
- 2) *Award Phase* – addressing potential risk by including award conditions in the recipient's Federal award [2 CFR 200.207]; and
- 3) *Post-Award Phase* – taking action to remedy non-compliance during the performance period, if the recipient fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award [2 CFR 200.338].

Under 2 CFR 200.338, if a recipient fails to comply with Federal statutes, regulations (including, but not limited to 2 CFR 200.300 – 200.303 and 2 CFR 200.308), or the terms and conditions of a Federal award, the recipient may be determined to be at risk of not being

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able to meet the Federal award's goals and/or the conditions associated with the Federal award. This determination may result in ETA designating the recipient as "high risk," which could lead to ETA imposing additional conditions on the Federal award, as described in 2 CFR 200.207, to mitigate the risk.

This Training and Employment Guidance Letter (TEGL) focuses on risk identified in the post-award phase of the Federal award lifecycle and sets forth the procedures ETA's Federal Project Officers (FPOs), Regional Office Grant Officers (RGOs), National Office Grant Officers (NGOs), and other appropriate officials will follow when determining if a recipient should be designated as "high risk" after award. It also describes the risk mitigation actions that can be applied to a recipient's Federal award(s) when the recipient has been given a "high risk" designation.

4. ETA Process for Assessing Risk After Award, Designating a Recipient as "High Risk" After Award, and the Requirements of a Recipient Designated as "High Risk."

Post-Award Risk Review

To evaluate the performance of the recipient and to identify potential risk of non-performance throughout the post-award phase, the FPO for each Federal award conducts initial or annual risk assessments (as appropriate to the specific type of Federal award), quarterly desk reviews, and may also perform on-site monitoring. The FPO will review not only quarterly financial and performance information submitted by the recipient, but also other reports and documentation required as a condition of the Federal award, and compliance monitoring reports along with recipient responses to these reports. If the FPO identifies any issues in their review, or in their conversations with the recipient, the FPO will communicate with the recipient to resolve any reporting errors and/or to alleviate other identified issues, to the extent possible. The FPO will then document the findings of this review in ETA's Grant Electronic Management System (GEMS). If the FPO is concerned with the results of the risk assessment documented in GEMS, the FPO may provide technical assistance (TA) and/or institute a Corrective Action Plan (CAP) to address the concern(s).

If the FPO continues to be concerned with the results of the risk assessment after the concerns were shared with the recipient to address, or the risk continues to worsen, or extends to other areas, the FPO will elevate the concerns to the appropriate National and Regional Office personnel, including the NGO. The NGO will work with the FPO and other appropriate ETA personnel to review the FPO's documentation, as well as Office of Inspector General (OIG) complaints and reports, and Single Audit findings. Any new information related to past performance and unresolved monitoring findings will also be reviewed. A risk-based approach will be used in reviewing this documentation to evaluate the risk associated with non-performance of the recipient and possible non-compliance with the Federal award in making a determination as to whether the recipient should receive a "high risk" designation. In addition to items of concern from the aforementioned documentation, the NGO may designate a recipient as "high risk" if additional information becomes available that demonstrates that the recipient: is not (is no longer) financially stable; has a

management system which does not meet (or no longer meets) the management standards set forth in the Uniform Guidance; has not demonstrated an ability to effectively implement or comply with statutory, regulatory, or other requirements imposed on the recipient; cannot effectively safeguard Federal assets; or has experienced a change in any of the other risk factors discussed in 2 CFR 200.205(c) that were reviewed in the pre-award risk assessment.

“High Risk” Recipients

Once the NGO has designated a recipient as “high risk,” ETA will examine whether the risk, or non-compliance, can be remedied by the NGO imposing additional conditions or formal corrective actions on the recipient.

Imposing Additional Conditions on a “High Risk” Recipient

Under 2 CFR 200.338, if a recipient fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award (and consequently receives a “high risk” designation from ETA), the NGO may impose additional conditions on the award(s), as described in 2 CFR 200.207. In making a decision on whether or not to impose additional conditions on a “high risk” recipient, the NGO will determine if specific conditions are necessary to mitigate the risk of the recipient’s non-compliance. Any additional conditions the NGO decides to impose will be specific to the factors that resulted in the “high risk” designation, and may include one or more of the following:

- 1) Requiring payments as reimbursements rather than advance payments (restricting cash drawdowns from the Payment Management System);
- 2) Withholding authority to proceed to the next project phase, or incurring additional expenditures, until receipt of evidence of acceptable performance within a given period of performance (issuing a stop work order to the recipient);
- 3) Requiring additional or more detailed financial, program, or performance reports;
- 4) Requiring additional project monitoring;
- 5) Requiring the recipient to obtain technical or management assistance; and/or
- 6) Establishing additional prior approvals for project activities.

Notifying the Recipient of the Additional Conditions

Once ETA has designated a recipient as “high risk,” and the NGO has determined that additional conditions could mitigate the recipient’s risk of non-compliance (or correct its non-compliance), the NGO will, as early as is reasonably possible, notify the recipient in writing of:

- 1) The nature of the additional requirements;
- 2) The justification for the additional requirements;
- 3) The action(s) needed to remove the additional requirements, if applicable;
- 4) The deadline for completing the action(s), if applicable; and
- 5) The procedure for requesting reconsideration of the additional requirements imposed.

Removal of the Additional Conditions

If additional conditions were added to the Federal award, the recipient must address the additional conditions and submit supporting documentation, as appropriate. Once the recipient submits its response to these additional conditions, the NGO must review the response and resolution actions. If the NGO deems the response acceptable, either in whole, or in part, the NGO will promptly remove the additional condition(s) that were adequately addressed from the Federal award. The NGO will notify the recipient in writing of the removal of any conditions/which additional conditions remain and still need to be addressed (if applicable).

Continued Non-Compliance/Failure to Address the Additional Conditions

If ETA determines that the non-compliance cannot be addressed, or has not been addressed, through additional conditions, the NGO may consider further action as described in 2 CFR 200.338.

5. **Action Requested.** Please disseminate to staff responsible for program, financial management, and reporting of ETA Federal awards.
6. **Inquiries.** Please direct all questions concerning this TEGL to the appropriate Regional Office.