



June 18, 2015

Ms. Christine Baker, Director
Department of Industrial Relations
1515 Clay Street, 17th floor
Oakland, CA 94612

Ms. Baker:

Attached is the report from the special study that was conducted last fiscal year to address alleged grant related financial indiscretions.

Your cooperation during the special study was appreciated. The enclosed report, based on the special study, did not identify any misuse of federal OSHA funds. Should you have any questions, please contact Patricia Gaydos at (415) 625-2575.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Yee Goto".

BARBARA YEE GOTO
Acting Regional Administrator

Enclosure

cc: David Shiraishi, Area Director, OSHA

SPECIAL STUDY FY 2014

California Division of Occupational Safety and Health (Cal/OSHA)
Topic: Misuse of Federal Funds

Evaluation Period: October 1, 2011 – September 30, 2013

Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region IX
San Francisco, CA
June 18, 2015
Revised July 15, 2015

California Special Study

This report is in response to a complaint filed directly with the California State Auditor. This complaint alleged that the Division of Industrial Relations (DIR) inappropriately used division funding including federal occupational safety and health grant funds. Although the complaint was not filed directly with the federal Occupational Safety and Health Administration (OSHA), a decision was made to conduct a special study investigating only those complaint items that involved OSHA grant funds.

Monetary resources to protect California workers from on-the-job safety and health hazards consist of federal awards and matching state funds allocated for safety and health programs identified and approved in the OSHA 23(g) grant and 21(d) cooperative agreements. DIR sponsors the OSHA program and houses the associated OSHA activities throughout the division. While enforcement related activities are housed in the Division of Occupational Safety and Health (DOSH), more commonly known as Cal/OSHA, the OSHA grant agreement does not cover all of Cal/OSHA's programs. Cal/OSHA uses only state funding for programs not included in the grant. Some of those programs include public safety in elevators, on amusement rides and ski lifts, and the safe use of pressure vessels.

OSHA's 23(g) enforcement grant requires the state to match 100% of the federal funds awarded and the 21(d) cooperative agreement requires the state to match 10% of the total funding. DIR consistently exceeds those required state matching funds, which is allowed by the grant rules. Overmatching federal funds allow the state to expand and better support the safety and health needs of their constituents. The final grant and cooperative agreement expenditures for 2011, 2012, and 2013 included significant overmatched funds by the state. DIR identified that the 21(d) and 23(g) state match money was allocated from the California Occupational Safety and Health (OSH) fund, which is supported by state assessments on workers' compensation premiums. Federal OSHA does not regulate the origin of the state match as long as it is not funded by money generated by the OSHA grant program.

The special study focused on six of the allegations possibly related to the federal grant funds. Upon request, DIR provided additional information and support documentation for this investigation. Information gathering included: an interrogatory questionnaire, telephone conversations, and meetings with the DIR Director Christine Baker, members of her staff, and California Budget Office staff. The ten remaining allegations did not affect the OSHA funded grant programs.

ALLEGATIONS

Allegation 1: The DIR took excessive administrative fees from the Division of Occupational Safety and Health (DOSH).

Finding: The DIR administrative fees described in the allegation are costs associated with the Statewide Central Service Cost Allocation Plan which is an allowance under the federal Office of Management and Budget guidance document for grant programs (OMB A-87). This document

covers California central services provided by other State Departments and Divisions (HR, Finance, etc.). The Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Attachment C allows statewide costs for centralized operating agencies for such things as motor pools, computer centers, purchasing, accounting, etc. to be allocated to federal in a reasonable and consistent basis.

Additional indirect costs for common or joint purposes that cannot be easily identified as direct costs were allocated to the FY 2011 – 2014 OSHA grant/cooperative agreements as approved by the U.S. Department of Labor's Cost Negotiator Indirect Cost Rate Agreements. The approved Indirect Cost Rate rose from 18.19% in FY 2011 to 21.83% in FY 2014 supporting the allegation that additional funds were paid to DOSH during this period. Since an approved Indirect Costs Agreement allowed this increase, there are no findings regarding this allegation.

Allegation 2: DIR imposed mandatory spending restriction on DOSH's budget beginning in FY 2011. The allegation states the enforcement program was not affected.

Finding: California provided the require matching funds including additional 100% state funding to the 21(d) and 23(g) program for fiscal years 2011, 2012, and 2013.

Allegation 3: DIR failed to exercise its state authority to shift expenses within the DOSH budget to provide more resources for core enforcement activates.

Finding: California provided the require matching funds including additional 100% state funding to the 21(d) and 23(g) program for fiscal years 2011, 2012, and 2013.

Allegation 4: The reclassification of industrial hygienists to safety engineers increased salary base for the DOSH field inspectors, but the increase was not incorporated into DOSH's outgoing budget to the California Department of Finance.

Finding: DOSH's budget proposal to their state finance department is outside the scope of the OSHA grant/cooperative agreement.

Allegation 5: DIR failed to use surplus state funds to hire field inspectors for DOSH's elevator unit.

Finding: DOSH's elevator unit is outside the scope of the OSHA grant.

Allegation 6: Money loaned to the Division of Labor Standards Enforcement (DLSE) came from the OSH Fund.

Findings: The Division of Labor Standards Enforcement (DLSE) adjudicates state worker's wage claims, discrimination and public works complaints, and enforcing labor law and welfare wage orders. About 1% of the 23(g) OSHA grant funds are allocated to whistleblower discrimination investigations. DIR uses money collected from direct assessments on California employers' workers compensation premiums maintained in the California OSH Fund to match

OSHA federal grant funds. Draws of federal grant funds are held separately in the Federal Trust Fund.

DIR identified the money loaned to the State Public Works Enforcement Fund as reallocated DOSH employer assessment funds from the eliminated Targeted Inspection and Consultation Fund that did not include federal grant funds. Because state money was involved in this loan, and did not involve the federally funded OSHA program under DLSE, there are no findings regarding this allegation.

Allegation 7 and 8: The California Governor's proposed fiscal years 2014/2015 budget has idle and unused funding in the OSH fund, but limits funding for DOSH's Process Safety Management unit that is funded by fees on oil refineries in the state.

Finding: The Governor's proposed budget is outside the scope of the grant management requirements for the OSHA grants/cooperative agreement.

Allegation 9: It is unclear the funding that was to be provided to DIR agencies for internal training under the 2011 Private Attorney General Act was used as intended.

Finding: DOSH's internal training is outside the scope of the requirements for the OSHA grants/cooperative agreement.

Allegation 10: Duplicate payments for DOSH's Labor Enforcement Task Force expenses occurred involving both the OSHA grant funds and the California Uninsured Employers Benefits Trust Fund.

Findings: The allegation did not identify the duplicate payment. Without a specific invoice to research, DIR's accounting internal controls and payment processes were reviewed. DIR provided copies of the State policies and procedures. The information confirms there are processes in place that ensure accurate and systematic accounting for revenue, expenditures and state property within the California State Accounting and Reporting System (CALSTARS). Internal control processes monitor and prevent duplicate payments. Additionally, after the allegation occurred, DIR conducted a focused review to establish that no duplicate payments occurred.

Allegations 11 and 12: DOSH's rent payments included payments for space occupied by other divisions or for vacant space.

Findings: DIR provided copies of the rent costs for 2011, 2012, and 2013. During the years in question, several DOSH offices relocated to new space. During the move process, there may be overlap in the payment of rent for both offices. Payment for vacant space could not have been long term since the rent schedules showed the rent charged to the grant decreased from FY 2011 to FY 2013. The 21(d) rent costs decreased by 22.6% (saving \$68,547 a year) and the 23(g) rent costs decreased by 5.7% (saving \$257,654 a year). There was no evidence grant funds were used to pay other division's rent costs, or for vacant space.

Allegation 13: For the period of March 2012 through October 2013, two former DOSH employees, reassigned to the DIR Office of Director, continued to receive salary and travel reimbursements paid from the DOSH funds.

Findings: The two DOSH employees reassigned to the DIR Office of Director were listed in the FY 2012 and 2013 23(g) grant agreements. DIR stated they provided telecommunications, information technology (including IMIS), and facilities management services support to Cal/OSHA. DIR provided a summary of grant related tasks and associated costs for the two employees from March 2012 through October 2013. The reported costs appear reasonable.

Allegation 14: DIR redirected positions within the Department resulting in a reducing in FTE for DOSH.

Finding: DIR's determination of the state required FTE per individual units is outside the scope of the OSHA grant/cooperative agreement.

Allegation 15: In May 2013, DOSH funds were erroneously used to pay overtime for a Division of Labor Standards Enforcement (DLSE) employee. The funds were returned to the DOSH budget.

Finding: This allegation is vague and may be an internal DIR accounting issue. If the employee was doing grant related work, the state funds used to match the federal grant funds may come from any state funding source as long they are not from federal funds related to another federally funded program.

Allegation 16: The management decisions of the DIR Director are questioned regarding establishing employees who duplicate the functions of the DOSH headquarters staff.

Finding: The management decisions of the DIR Director are outside the scope of the grant /cooperative agreement.

CONCLUSION

According to our investigation, it has been determined the alleged misuse of Federal OSHA grant funds is unsubstantiated. During the 2015 on-site financial monitoring visit, reviews of the financial and administrative management of the California OSHA grant programs will verify compliance with Federal financial regulations. The review will focus on California's financial management system, procurement, property management, budget procedures, and include sampling of accounting records and source documents.