

# **Regional Arts Councils' Misuse of Funds Procedure**

## **Description and Scope**

This procedure defines misuse of funds, outlines investigation and documentation of misuse, establishes a range of consequences when misuse has occurred, and outlines a process by which a grantee may appeal consequences.

This procedure applies to funds a regional arts council receives from the State of Minnesota from its general fund, its arts and cultural heritage fund, or any other state funds. This procedure does not apply to other revenue sources regional arts councils may have (e.g., contributions from other grant makers or donors, or earned income).

## **Objective**

The intent of this procedure is to ensure that regional arts councils are managing state funds in a consistent manner; that similar consequences will be imposed when misuse of state funds occurs, and that a grantee that has misused funds will lose privileges statewide, not just in the region in which it resides.

## **Definition: What constitutes misuse of funds**

Misuse of funds means using State of Minnesota resources for any purpose other than those allowed by:

- State of Minnesota statutes, laws, rules, policies; and
- The regional arts council receiving and disbursing the funds; and
- The program guidelines or grant contract through which funds are disbursed.

Misuse can happen both intentionally or unintentionally. Intentional misuse occurs when the grantee knowingly spends funds in ways that are outside the allowable parameters of the State, the council, or the program. Misuse also occurs when a grantee spends funds in ways that are inconsistent with the submitted proposal and budget. Unintentional misuse generally occurs as a result of miscommunication or misunderstanding.

Whether the misuse is intentional or unintentional -- notices and consequences will be issued.

A grantee that is unable to complete all proposed activities is not misusing funds. For example: An artist receives a grant to conduct residencies in 3 schools—three months in school A, three months in school B, three months in school C. Midway through the project, and before activities have happened at school C, school C decides it is unable to host a residency. It is too late to find a replacement school; one-third of the awarded funds will be unspent at the end of the grant period. The grantee will need to document how funds were spent, and return any unspent funds.

Unspent funds are not misuse. The notices and consequences described below would not apply in this situation.

### **When and how to identify misuse**

Based on its internal risk assessment, each regional arts council is expected to put in place internal controls to prevent and detect misuse of state funds.

The following are some of the most common kinds of internal controls a council might put in place, however, this is not an exhaustive list:

1. Writing extremely clear program guidelines that explicitly describe what expenses are allowable and unallowable;
2. Issuing grant contracts that list costs that are unallowable;
3. Issuing grant contracts that incorporate the proposal and budget;
4. Conducting monitoring or site visits during the grant period;
5. Requiring and reviewing interim and/or final reports;
6. Conducting reconciliation or audits of grant expenses during or after the grant period.

Misuse may also be detected and reported by a third party. In these cases, council must conduct a careful investigation to ensure that the allegations are true and that misuse has occurred.

Grant records must be retained for seven years—the year in which the original grant contract was issued, and six subsequent fiscal years. Misuse must be detected and addressed within that seven-year period.

### **Responsibilities of council, when misuse has occurred**

#### ***1. Verification and documentation***

- Council will request financial documentation from grantee to determine exactly how funds were spent. If grantee does not provide requested documentation, skip to # 2.
- Council will review all financial documents to verify their accuracy and authenticity
- Council will authenticate any documents or receipts that seem suspicious ♦ Council will determine how much money was spent inappropriately
- Council will document how it determined money had been spent inappropriately
- If grantee has any other active grants, council will review those grants for potential misuse and will suspend any grant payments until a thorough investigation has been completed.

#### ***2. Notice of misuse and consequences to the grantee***

- Council will notify grantee, in writing (via mail or e-mail), that misuse has been detected. Written notice will state:
  - The amount of funds that have been misused, and how council determined funds had been misused.

- How much money needs to be returned to council, and the date by which funds must be returned.
- The consequences the grantee will face if funds are returned, and the consequences the grantee will face if funds are not returned.
- If grantee does not respond, a second written notice will be sent within 30 days of original notice, accompanied by a phone call from council to grantee.
- If grantee does not respond, a third written notice will be sent by registered mail, within 60 days of original notice. Unless and until a grantee responds, no less than three notices will be given. More notices may be given, but all should be sent within 90 days from the date misuse is detected.

### ***3. Notice to the Arts Board***

- Council will call or e-mail Arts Board executive director as soon as the misuse is discovered.
- Upon receiving notice of misuse, the Arts Board will:
  - Request documentation of the misuse.
  - Notify the Office of the Legislative Auditor. Other state agencies may also be notified, if relevant, i.e. Office of the Attorney General or Minnesota Management and Budget.
  - Notify other regional arts councils that misuse has occurred and no other state funds may be awarded to that grantee until the investigation, recovery, and consequence phases have been completed.
  - Review its active grant contracts to determine if grantee is also receiving funds from the Arts Board. If grantee has an active grant with the Arts Board, any outstanding payments will be suspended and no new award(s) will be made to the grantee until the council's investigation, recovery, and consequence phases have been completed.

### ***4. Recovery of funds***

Council is expected to use all reasonable methods to recover the funds that have been misused. Recovery of funds might take different forms, depending on the amount owed and the circumstances.

- If there is an unpaid balance on the grant in question, council will withhold that payment until the investigation, recovery, and consequences phases have been completed, and will cancel the payment if misuse is proven and funds must be returned.
- If there is no unpaid balance, council may use a variety of methods to recover the misused funds:
  - Council may request a lump sum repayment of funds
  - Council may negotiate a repayment plan with grantee
  - Council may engage the services of a collection agency to recover the funds ♣
  - Council may ask the Arts Board for assistance in recovering the funds.

## ***5. Consequences***

Misuse of state funds is never allowable. Severe consequences must be imposed if funds are not returned; lesser consequences will be imposed if funds are returned. Consequences may be different, depending on the amount of funds that have been misused. If the reason for the misuse is unintentional, consequences may be minimized.

The following is the range of consequences a regional arts council will impose:

- If grantee does not return the funds:

Grantee is permanently ineligible to receive State of Minnesota funds from the council, from the Arts Board, or from any other regional arts council.

- If grantee does return the funds:
  - Misused funds are less than \$1,000 – Grantee is ineligible to receive State funds from the council, the Arts Board, or any other regional arts council for a period of one year from date of notification.
  - Misused funds are \$1,000 - \$5,999 – Grantee is ineligible to receive State funds from the council, the Arts Board, or any other regional arts council for a period of two years from date of notification.
  - Misused funds are \$6,000 or more – Grantee is ineligible to receive State funds from the council, the Arts Board, or any other regional arts council for a period of three years from date of notification.

In some circumstances, council may determine that consequences outside this range are appropriate and may impose them. In these cases, council should document, and provide written notice to the grantee, the reasons that it believes more or less severe consequences are warranted.

- Council will notify the Arts Board which consequences have been imposed. Arts Board will notify other regional arts councils that grantee is under consequences.

## ***6. Reinstatement***

- At the end of the consequence period, the grantee must submit a request to the council to have its eligibility reinstated. The request must clearly outline what safeguards have been put in place to ensure that misuse would not occur again. Grantee may not submit a grant application to the council until council has reinstated its eligibility.
- If council is satisfied that sufficient safeguards have been put in place, it will notify the grantee that eligibility has been restored.
- If council is not satisfied that sufficient safeguards have been put in place, it may deny the request. It will notify the grantee of the weaknesses that still exist and steps that need to be taken to regain eligibility privileges. Grantee may submit another request for reinstatement when those weaknesses have been corrected.

- Council will notify the Arts Board that it has reinstated grantee’s eligibility, or that it has denied the reinstatement request. The Arts Board will notify other regional arts councils that the grantee’s eligibility has, or has not, been reinstated.

## **Appeal process**

Grantees that have been assigned consequences have the right to appeal if one of the following two circumstances has taken place:

A. Consequences outside the guidelines have been assigned that the grantee feels are unfair or unwarranted.

B. Grantee has made substantial progress toward remedying the situation that prompted the consequences; grantee may appeal to have the remainder of the consequences waived.

Each council may adopt its own appeal process, so long as the process aligns with the intent of this misuse of funds procedure. Council will document its appeal process, will make its grantees aware of the process, and will document the appeal process in its biennial plan that is submitted to and maintained by the Arts Board.

If the council does not adopt its own appeal process, it should use the following process:

A. Consequences outside the guidelines have been assigned that the grantee feels are unfair or unwarranted

The grantee must submit an appeal in writing within 30 days of the date of the letter notifying the grantee that consequences will be imposed. The grantee’s appeal must state the reasons for the appeal and must provide clear and compelling support for its assertion that the consequences assigned were unfair or unwarranted.

— or —

B. Grantee has made substantial progress toward remedying the situation that prompted the consequences; grantee may appeal to have the remainder of the consequences waived.

The grantee must submit an appeal in writing no earlier than 180 days (six months) from the date of the letter notifying the grantee that consequences will be imposed. The grantee’s appeal must state reasons for the appeal and must provide clear evidence that grantee has taken the necessary steps and implemented the appropriate remedies so that its privilege of eligibility should be reinstated.

- Council will review the appeal at its first meeting following the receipt of the appeal. At that meeting, the council may take one of the actions provided in subitems (1) to (5) in response to the appeal:

1. Determine that the appellant does not show sufficient cause for an appeal;

2. Direct the staff to investigate the appeal and bring a recommended resolution of the appeal to a subsequent meeting of the Council;
3. Request that the appellant appear before the Council at a subsequent meeting and address the appeal at that time;
4. Determine that the appellant does show sufficient cause for appeal and offer a settlement to the applicant at the meeting.

If the appeal results in early termination of consequences, the Council will notify the Arts Board that consequences have been lifted and eligibility has been restored. The Arts Board will notify other regional arts councils that the grantee's eligibility has been restored.

A grantee may not appeal to the Arts Board to overrule the decision of the regional arts council.

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