



**State of Wisconsin / DEPARTMENT OF
MILITARY AFFAIRS / Wisconsin Emergency
Management**



Title:	2010.1 Adverse Determinations and Appeal Process	Policy Number:	2010.1
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I. Purpose

WEM is committed to helping grant recipients and subrecipients (subrecipient) avoid adverse determinations throughout the life cycle of a grant. If a subrecipient should receive a formal adverse determination, WEM will use a two-level appeal process to allow for review of additional supporting documentation and provide further determination by WEM administration.

II. Scope

This process applies to any formal adverse determination due to a finding of noncompliance with applicable laws, regulations, assurances, terms, and/or conditions applicable to a grant administered by WEM.

Determinations that may be appealed include, but are not limited to:

- An adverse award determination in which a grant was administratively rejected, denied, or revoked, in whole or in part.
- Denial (withholding) of a non-competing continuing award for failure to comply with the terms of a previous award.
- Determination that a grant is void because the subrecipient failed to sign a grant agreement, applied under false pretense, or because it was not authorized by statute or regulation.
- An adverse decision to deny or return a request to modify a grant.
- Termination of a grant, in whole or in part, for failure of the subrecipient to carry out its approved project in accordance with the applicable law, regulations, assurances, terms, or conditions applicable to the grant.
- Determination that an expenditure is not allowable under the grant or the subrecipient failed to discharge its obligation to account for grant funds.

This process does not apply to recoupment of previously paid reimbursement(s), which is guided by WEM directive 2003.11 Grant Payment Correction or the Wisconsin Disaster Fund which is guided by Administrative Rule 7.

III. Definitions

Adverse Determination – A final and conclusive decision that, after a review of the information provided, has a negative impact on the subrecipient.

IV. Policy

It is the responsibility of WEM to provide guidance to subrecipients and seek possible solutions to avoid potential formal adverse determinations. Within the limits of their authority, grant managers will propose

alternative solutions, including imposing additional conditions per standard terms and conditions. Should a grant manager and subrecipient not find a suitable solution, the subrecipient may file an appeal through a two-level process.

In the first level of the appeal process, the subrecipient may contest an adverse determination which will be reviewed by the appropriate bureau director. If the appeal is denied by the bureau director, the subrecipient may then file a second and final appeal with the WEM Administrator. No appeals will be considered by the WEM Administrator without first being considered by the appropriate bureau director.

In accordance with the DMA/WEM standard terms and conditions regarding termination, payments, and closeout of grants, the subrecipient must have thirty calendar days to respond to any adverse decision with a request to appeal. An extension will be granted if the subrecipient can show reasonable cause why an extension is warranted.

WEM will work to provide decisions in a timely manner at each stage of the adverse determination and appeal processes with a target of no more than 30 calendar days to issue a decision at each stage. The grant manager or their supervisor will inform the subrecipient of the 30-calendar-day turnaround time. In the event that 30 days lapse before a decision is reached, the grant manager will continue to provide regular status updates.

V. Procedures

A. Adverse Determination

1. Initial Finding: Within the course of monitoring a grant throughout the grant's lifecycle, a grant manager may conclude there is potential for an adverse determination. The grant manager shall communicate the finding to the subrecipient in writing via email and provide the following information:
 - a. A statement of initial finding.
 - b. The reason or justification for the finding.
 - c. An opportunity for the subrecipient to provide additional documentation that would allow the grant manager to explore alternative solutions to avoid the adverse determination.
 - d. A request for acknowledgement from the subrecipient that states either
 - i. Concurrence with the initial findings, or
 - ii. Intent to provide additional documentation to seek an alternative resolution.

If a subrecipient does not concur with the initial findings and an alternative resolution cannot be reached, the grant manager will consult their supervisor for concurrence or additional assistance creating alternative solutions within their authority. The assigned grant manager will also inform the subrecipient that the claim has been forwarded to a supervisor for further review and assistance.

2. Formal Determination: The supervisor will work with the grant manager to review the initial findings and propose additional solutions to avoid a formal adverse determination. If the adverse determination stands, the grant manager or their supervisor will send a formal notification to the subrecipient in writing via email and provide the following:
 - a. A statement of formal determination.
 - b. The reason or justification for the determination.

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- c. The name(s) of the determining supervisor(s) if a supervisor is not the one directly communicating the decision to the subrecipient.
- d. A notice of the right to appeal within 30 calendar days and a copy of this directive.
- e. A request for acknowledgement from the subrecipient that states either
 - i. Concurrence with the findings of the adverse determination and agreement to remedy any cited concerns, or
 - ii. Intent to seek a formal appeal.

B. Appeal Process for Formal Adverse Determination

1. Initiating a Formal Appeal – Subrecipient Requests: Any appeal of a formal adverse determination must be submitted in writing to the supervisor of the grant manager. All subrecipient appeals must contain the following:
 - a. Detail the nature of the disagreement.
 - b. Provide justification.
 - c. If applicable, additional documentation to support their justification.

Upon receipt of the written appeal, the supervisor will forward both the appeal and all other compiled documentation to the bureau director within one business day.

2. First Level Appeals: Bureau Director Ruling - The first level of appeal decision should be issued no more than 30 calendar days from the day the appeal was received.
 - a. The bureau director will review the appeal and consider all relevant documentation and forms of precedent to ensure fair and ethical treatment of subrecipients. Decisions will be based upon:
 - i. Documentation from the official grant record.
 - ii. Any additional information provided by the subrecipient.
 - iii. Previously explored solutions provided by grant manager and grant supervisor.
 - iv. Review of similar adverse determinations and/or appeals for the possibility of relevant precedent.
 - v. Consultation from the WEM Compliance Section.
 - b. The bureau director will then issue a decision in the form of an official letter [see attachment Appeal Decision Letter Template]. The letter will be issued on WEM letterhead, signed, and contain the following:
 - i. Date that the appeal was received.
 - ii. Summary of the nature of the appeal.
 - iii. Statement of the bureau director's appeal decision.
 - iv. Statement of rationale, including any established precedent.
 - v. Next steps for the subrecipient to complete if there is no intent to further appeal the determination.
 - vi. Explanation of the right to submit a second and final appeal within 30 calendar days.
 - vii. Signature of bureau director.
 - c. The bureau director will submit a digital copy of the official letter to the grant manager, the grant manager's supervisor, and the WEM Compliance Section. The bureau director will brief the WEM Administrator as appropriate.

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- d. The grant manager will file a copy of the appeal decision in the grant record.
3. Second Level Appeals: WEM Administrator Final Ruling - If a subrecipient chooses to advance a failed appeal, the bureau director will submit the request to the WEM Administrator. The appeal decision issued by the WEM Administrator will be the final determination with no further avenue of recourse.

The final appeal decision by the WEM Administrator has a target of 30 calendar days for completion, however, flexibility may be required to allow for full consideration of the evidence.

The final appeal determination letter will be signed by the WEM Administrator and provided to the grant supervisor and bureau director for distribution. The grant supervisor will then send the letter to the subrecipient and provide a digital copy to the grant manager, grant record, and WEM Compliance Section.

- C. Grant Compliance: The Compliance Section in the WEM Bureau of Policy & Grants is available to answer questions, provide guidance, conduct research, and provide a second review. In addition, the Compliance Section will make a copy of all appeal decision letters available for other grant managers in other grant programs to provide guidance, be transparent, and be consistent.

VI. Authority and Cross Reference

- A. Figure 1
- B. WEM Directive 2003.11 Grant Payment Correction
- C. DMA/WEM Standard Terms & Conditions – Article II Compliance with Award Terms and Conditions
- D. DMA/WEM Standard Terms & Conditions – Article XXII Termination of Agreement
- E. Title 2 Code of Federal Regulations (2 CFR) § 200.340 Termination
- F. Title 2 Code of Federal Regulations (2 CFR) § 200.342 Opportunities to object, hearings, and appeals.

VII. Associated Forms

- Appeal Decision Letter

VIII. Administrative Reference

- Created 11-22-2024; Published 12-3-2024

Figure 1

