

Disaster Recovery Compliance and Monitoring

The Grantee's Armor Against
Losing Grant Dollars



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BACKGROUND

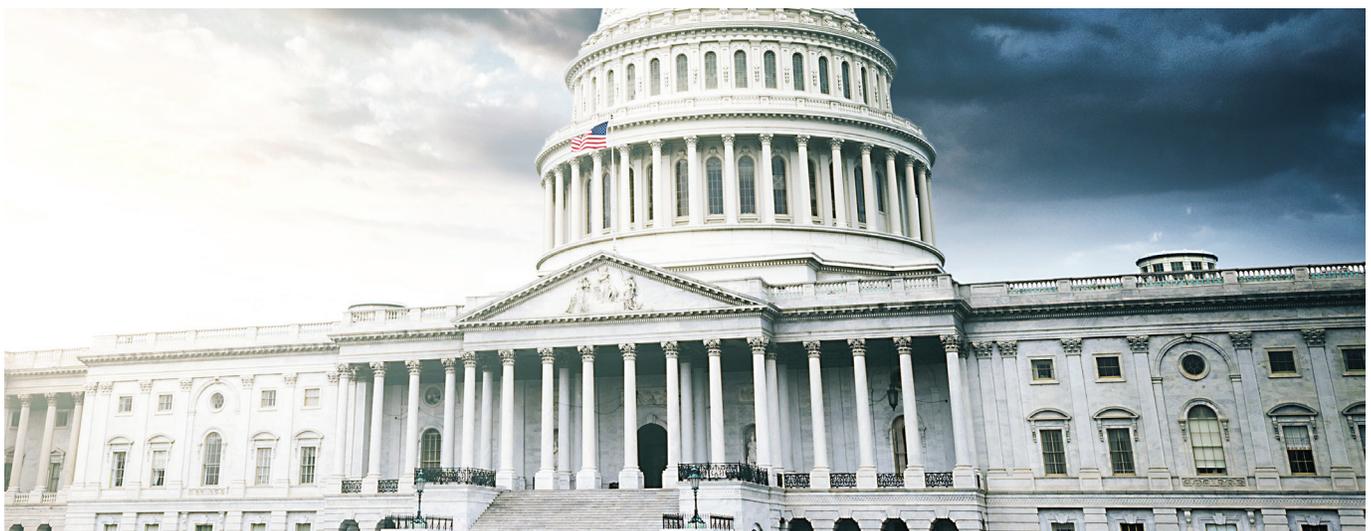
When a natural disaster strikes, high-profile federal organizations such as the Federal Emergency Management Agency (FEMA) and the Department of Housing and Urban Development (HUD) often are in the spotlight. But once the immediate response phase has passed and the work of long-term recovery begins, it is generally the state and local agencies that are on the front lines. Indeed, when the federal government allocates funding to FEMA or HUD to help recovery efforts for a particular disaster, those agencies in turn allocate it in the form of grants to state and local agencies so that it can be distributed “on the ground” where the disaster struck.

This funding comes to state and local agencies with significant strings attached. The distribution of funds by recipient (grantee) agencies must adhere to damage assessment thresholds, there must be an absence of duplicative benefits,¹ and the recovery activities of the state and local agencies must follow the grant proposals they made. During an actual recovery effort, the public and the press are clamoring for relief and a return to normal while the federal agencies struggle to implement recovery programs based upon available but often incomplete information. As more information is obtained and solutions become clearer, the programs are adjusted, redesigned, revised, or replaced, changing the requirements that grantee agencies must meet. Managing under these circumstances is challenging. Even in the best of circumstances, miscommunication,

unfamiliarity with standard practices and procedures, improperly held assumptions and, sadly, outright fraud lead to situations where grantees find all too late that their programs were operating outside of the recovery program requirements. This can result in the funding agency denying reimbursement requests or even mandating the recovery of grant dollars from the individuals who were the end recipients of aid.

To lessen the risk of being denied reimbursement requests or having to recover expended grant dollars, agencies receiving disaster relief funds are required to implement internal controls to ensure that their programs operate in compliance with statutory provisions, the terms and conditions of the funding agreement and the program requirements, and standards set or accepted by the funding agency.

These internal controls typically involve the design and implementation of a compliance and monitoring plan. Compliance and monitoring plans include the tools government agencies and grantees need to validate program operation and identify potential weaknesses in adhering to program and regulatory requirements. A properly designed compliance and monitoring plan will help the grantee in identifying programs with the highest risk and provide a mechanism to identify areas in need of correction or modification throughout the life cycle of a program.



¹Zatlin, Angela M., Duplication of Benefits in Disaster Recovery Housing Programs, CohnReznick Government, 2011. http://www.reznickgovernment.com/sites/reznickgovernment.com/files/papers/duplication_benefits_rezgov_28july11.pdf.



THE HIDDEN COMPLEXITIES OF GRANT MANAGEMENT

To understand how compliance problems can arise even in a program run with good intentions, it is helpful to examine how programs typically evolve. When disaster recovery funds are appropriated at the federal and state level, they are usually targeted toward one or more of four major categories: economic development, resiliency planning, infrastructure activities, and housing activities. When a grantee designs a program for which it hopes to receive funding, that program design must be based on an understanding of its obligations in administering the funds, the funding methodology, and the eligible activities and other limitations on fund use. As the grantee program plan becomes refined, further decisions are made, such as to whether or not to fund the program directly; use subgrantees or subrecipients to deliver the funding; or provide loans, loan guarantees, or tax credits to achieve program objectives. When grantees do engage subrecipients or contractors, they often assume that they are absolved of responsibility for the program. But this is not the case.

Indeed, involving third parties may carry certain risks. If the contractor's compensation is tied to production

or dollar volumes, that contractor is motivated to make decisions that expand the scope of the program, which may put the program at risk for noncompliance with its agreed-upon mandate. This can also lead to a specific requirement being ignored in order to achieve speedier activity turnover, or incorporating non-disaster-related activities in the program performance requirements. All of this exposes the grantee to denial of a reimbursement claim or funds recovery efforts mandated by the funding authority.

The problem is exacerbated because when grantees are called upon to execute proposed programs, they often find their oversight capabilities stretched by high-pressure conditions that last for an extended period. Potentially troublesome issues or conflicts can then be overlooked in the name of expediency. Particularly in smaller communities, the strategy toward risk management is often "Everybody leave it alone...When it comes up, that's when we'll deal with it."² Unfortunately, the problem usually does come up, often at a point at which there is little that can be done to address the underlying issue.

BEWARE THE OTHER FORCES AT WORK

If conforming to the funding agency's restrictions regarding the use of funds were the sole criterion measuring how well a grantee managed the program, grants management would be a straightforward task. But the funding agency is not the only player at the table. Executive branch officials, legislators, and regulators implement their own policy objectives, goals, and requirements through the actions of the funding agency, and this may result in a new level of requirements that must be adhered to—requirements that may be unrelated to the goals for which the funds were designed to be used. Funding authority staff has little discretion in interpreting how flexible a grantee may be in implementing the regulations and requirements under which funds are made available.

When a grantee or subrecipient is unfamiliar with the specifics of this process, the result can be missteps leading to all or a portion of the funds being at risk for denial of reimbursement or funds recovery.

In addition, there are usually overriding policy requirements accompanying the funds used in the recovery efforts. Many of these regulations have their genesis when the funding authority or legislative body addresses past grant administration or internal control failures. As a result, the applicability of these policies or requirements may not be immediately obvious to the grantee, given the focus of the program; for example, a grantee may be obligated to set up an employment program to attract

²Alice Dowty, "Parish Council debris flap continues," The Livingston (La.) Parish News, January 15, 2011; http://m.livingstonparishnews.com/mobile/article_4f350d02-20ce-11e0-82f9-001cc4c002e0.html.

very low-income candidates for an infrastructure project, or a grantee may be required to review a contractor's pay practices associated with a construction project. Failure to comply with these processes, restrictions,

or requirements could lead to disallowances or sanctions being imposed on the recipients of the disaster recovery funds.

COMPLIANCE IS IN THE DETAILS

A grantee's procurement decisions and practices can also create an unanticipated minefield. All too often, local officials bypass mandated procedures in order to expedite service delivery. For example, imagine a scenario in which virtually everyone in town uses John's Towing and Hauling Service to handle large-volume hauling needs. A disaster strikes, and naturally the call goes out to John to handle the debris removal. It happens that John is the mayor's nephew. There are two other hauling companies in adjacent communities that are capable and experienced in debris removal. The fact that the contract was awarded without a competitive bidding process—and that the mayor's nephew was the beneficiary—is likely to raise red flags for auditors and inspectors and may result in the request for reimbursement of John's invoices to be rejected. Additional charges stemming from the familial relationship may also be filed.

With very few exceptions, contract awards for products and services should be based upon competitive procurement processes.³ But this is only the beginning; procurement



requirements can include evaluations to determine if there is a breach of a statutory or regulatory standard, a conflict of interest present, or unreasonable costs, as well as an examination of the professional or ethical qualifications of contractors. Another common requirement that is often overlooked is that covered work be rebid and the work provided under another contract. There are numerous occasions in which localities have had reimbursement requests denied because they allowed the pre-approved contractor to continue under the terms of a time-and-material contract beyond the allowable period established by the funding agency.⁴

INSPECTORS, AUDITORS, AND THE HUNT FOR WASTE

Government spending is under the spotlight, and federal disaster spending is not immune from scrutiny.⁵ Similar cuts are occurring at the state level; areas that were traditionally off limits to budget reductions are targets for cutbacks. The pressure for such cuts, and the associated demands to eliminate wasteful spending, results in increased scrutiny of existing programs and

their performance record. As a result, more attention is being paid to the work of those in the funding agencies' Offices of Inspectors General and other auditors. Consider that many federal and state law enforcement agencies highlight recovery of misallocated funds as a key element in their annual reports.

³See 44 C.F.R. §13.36.

⁴For example, FEMA allows communities to establish predisaster debris removal contracts on a time-and-material basis for use during a period of 70 hours after a disaster strikes. Further debris removal work must be procured under a new contract where the scope of work is detailed and priced on a lump-sum or unit-price basis. FEMA Recovery Fact Sheet RP 9580.201, p. 3; http://www.fema.gov/pdf/government/grant/pa/9580_201.pdf.

⁵As of this writing, congressional efforts to pass legislation increasing disaster recovery funding to cover unanticipated levels of disasters are stalled in partisan battles over government spending.



The inspectors and auditors usually appear at specific stages during a program and again after its conclusion⁶ to perform their review. They are trained to identify situations where funds are at risk or have been improperly expended. In fairness, the inspectors and auditors are usually helpful in defining areas of risk and alerting grantees to corrective actions to be taken. However, when they do issue a formal finding, there are significant consequences. And because their findings are often issued after the decisions have been made and the major players have moved on, too often the result is finger pointing, disputes among parties and agencies, the need to reprocess applications, legal

action, grant fund recovery from applicants, and the need to fund disaster relief efforts from local tax revenues.

Preventing or minimizing the consequences of errors in grant administration requires careful preparation so that the organization can identify errors early in the process and take corrective action immediately. This can be accomplished by establishing a compliance and monitoring review plan and designating an internal team or function to monitor grant programs independently with the mindset of the inspector or the auditor. This gives grantees the greatest chance of discovering problems before it is too late.

THE COMPLIANCE AND MONITORING PLAN

Operating staff often have the perception that internal compliance and monitoring activities are counterproductive, intrusive, and time-wasting. Front-line decision makers are understandably wary of “armchair quarterbacks.” However, the complexity of grant administration requires regular oversight by knowledgeable monitors to ensure that a detail that is perceived to be minor, but is actually critical, is not overlooked.

The use of grant administration monitors should be supported by the highest levels of management. Reinforcement of the importance of program monitoring from the top encourages program managers to engage actively in operational and compliance reviews. The well-designed compliance and monitoring review process also has several characteristics that prevent it from being overintrusive. Designing a monitoring and compliance program should begin with a risk assessment, so that energies can be targeted toward programs and projects that by their nature or structure are more susceptible to breaches or deviations from accepted standards or requirements. This risk assessment also then allows one to determine the monitoring frequency for a particular program, with riskier programs and projects receiving more frequent scrutiny⁷ and less risky programs suffering minimal disruption.

Well-designed monitoring plans must also be tailored to the organization’s place in the grant-processing

and disbursement chain. The monitoring plan for a grant-funding organization differs significantly from the monitoring plan for a grant recipient: The former will focus on whether the recipient or any intermediate organizations are meeting their monitoring obligations, while the latter will be monitored for compliance and performance. As always, the design of the monitoring plan focuses only on needed verification and validation, rather than the proverbial fishing expedition.

The key areas reviewed for compliance with agreements and regulations are operations, legal, and regulatory requirements and financial administration. Further guidance can often be found in the administrative manual issued by the grantee or funding organization. This manual provides sample policies and procedures, reference to relevant agency handbooks, and sample monitoring checklists, which provide operational units and monitors insight into the depth and detail of the review for a particular area or type of program. The complexity of a well-crafted compliance and monitoring review increases with the number of recipients and subrecipients, contractors, and administrations involved in a particular program. The presence of construction activities may also add to the complexity of a compliance and monitoring review, as they are the beneficiaries of several policy initiatives focused on opportunities related to employment in construction fields and associated regulatory oversight.

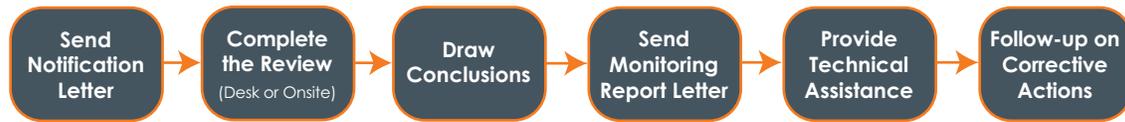
⁶It is not unusual for inspectors to conduct an examination long after the program has been closed out. For this reason, grantees are required to maintain the program files for a defined period, usually three years after the program is closed. See, e.g., 24 C.F.R. §85.42 (b).

⁷One criterion typically used in establishing the risk associated with a project is the experience of the grant recipient in administering grants of a similar scope and nature. While a good indicator of potential risk, the recent events associated with the Philadelphia Housing Authority reinforce the need for periodic monitoring even in the most experienced environments. (See:http://www.pha.phila.gov/media/76239/recovery_plan_progress_report_ppt_new_cover_09-29-2011.pdf)



The compliance and monitoring review itself, if properly initiated, is straightforward. At a conceptual level, the process follows the path below:

Compliance and Monitoring Review



A monitor initiates the review by performing a desk review in which all program background documentation and status reports are compiled and reviewed. Often the desk review will satisfy the monitor, and an onsite review will not be initiated. When an onsite review is required, it usually will be used to validate the desk review and focus on potentially problematic areas. This will minimize any disruption in day-to-day operations.

Once a compliance and monitoring review has been conducted, its findings are distilled into a monitoring report, which should highlight any areas needed for further action. For issues that demand attention, corrective action can be implemented directly by the operating staff. If training or technical guidance regarding regulatory requirements is called for, the compliance and monitoring staff will provide the training or instruction needed. In such a team environment, the processes are refined and the future oversight activity is minimized.

CONCLUSION

Grantees are obliged to ensure that grant funds are expended on the purposes for which they are intended and that restrictions on the use of those funds are incorporated in the design and implementation of their programs. Responsibility for operating the programs within those boundaries remains with the grantee through all phases and levels of program administration. Failure to administer grant funds in accordance with these responsibilities can result in disallowance of reimbursement requests or recovery of funds expended inappropriately. Designing and implementing a carefully

crafted compliance and monitoring review plan during the execution of a program will assist the grantee in assuring that the program is operating efficiently and appropriately. Should issues be identified, they can be addressed during the program life cycle, either through program or operational modification, or by providing technical assistance to improve understanding of proper processes or regulatory requirements. Successful implementation of a compliance and monitoring review plan will mitigate instances where funding is challenged or fund recovery is sought.



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