



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

March 30, 2023

MEMORANDUM

SUBJECT: Management Implication Report: Mitigation of Grant Fraud Vulnerabilities

FROM: Jason Abend, Assistant Inspector General
Office of Investigations

A handwritten signature in black ink, appearing to read "Jason Abend".

TO: Kimberly Patrick, Principal Deputy Assistant Administrator
Office of Mission Support

Purpose: The Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022 will provide the U.S. Environmental Protection Agency with approximately \$100 billion for infrastructure- and climate change-related purposes. Some of these funds will be distributed through familiar mechanisms, such as the state revolving funds or pollution prevention grants. Others will go through new or expanded programs, such as the Greenhouse Gas Reduction Fund and environmental justice grant programs.

Proper oversight of funding recipients has always been critical to ensure proper stewardship of taxpayer dollars. The importance of such oversight has increased in light of the IIJA and the IRA. We are issuing this report to inform the Agency of certain issues related to the awarding and disbursement of grants, as well as to provide considerations for the Agency to strengthen its grant-funding mechanisms.

Summary: The EPA Office of Inspector General has observed that grantees and subrecipients may not be fully aware of key fraud prevention and enforcement measures. First, the EPA should take stronger steps to clearly communicate the criminal, civil, and administrative consequences of fraudulent conduct throughout the life cycle of a grant. Second, the EPA needs to add OIG reporting requirements and whistleblower protection provisions to its standard terms and conditions. For example, the Agency should consider requiring all grantees and subrecipients to report suspected instances of fraud directly and immediately to the OIG. The EPA should also consider requiring that grantees and subrecipients convey whistleblower rights and protections to their staff. And third, the EPA must ensure that the OIG has timely access to the records and personnel of grantees and subrecipients. The Agency should consider requiring that all grantees and subrecipients understand and abide by the inspector general access rights set forth in the Inspector General Act of 1978, as amended, and the Uniform Grant Guidance, among other authorities.

The EPA Should Take Stronger Steps to Clearly Communicate the Consequences of Fraud: When applicants submit federal grant applications, they are required to attest that the statements and certifications made in the application are true, complete, and accurate. Similarly, when grantees draw down grant funds, they are required to attest that expenditures are proper and in accordance with the terms and conditions of the federal award. These attestations warn applicants and grantees of the potential for criminal, civil, or administrative penalties for fraud or false statements. While these attestations warn of the consequences of untruthful conduct, the EPA should take additional steps to advise grant applicants and recipients of the consequences of fraud.

As part of the process for seeking an EPA grant, applicants are directed to fill out, among other forms, Standard Form 424, “Application for Federal Assistance,” which includes the attestation shown in Figure 1.

Figure 1: Example of attestation statement

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Source: Attestation in Standard Form 424. (OMB Number 4040-0004)

When grantees submit annual and final fiscal reports and vouchers requesting payment, [2 C.F.R. § 200.415](#) requires the following certification: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.”

The [EPA General Terms and Conditions Effective October 1, 2022](#), which all grantees must comply with, states that the grant award is subject to all requirements in 2 C.F.R. part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” guidance, commonly known as the Uniform Grant Guidance, which would include the above certification. However, the EPA’s terms and conditions only generally state that all of part 200 must be complied with, and they do not reference or otherwise note the need for and purpose of the 2 C.F.R. § 400.415 certification. In addition, the [EPA Subaward Policy](#), which addresses requirements for subawards, does not advise of or discuss the potential consequences subrecipients may face if they commit fraud in connection with the grant funds.

While the attestations and certifications alert applicants and grantees of the potential consequences of fraud, they are currently simply a “box to be checked” in the multitude of forms and questions that must be submitted during the life cycle of a grant. The EPA needs to emphasize that applicants and grantees must read these attestations and certifications in their entirety and fully understand them; applicants must be able to affirm that applications for grants are true and accurate; and grantees must be able to affirm that they are in compliance with the terms and conditions of the grants and that grant funds are used only for their intended purpose. If the EPA does not ensure that applicants and grantees understand the weight of these attestations and certifications, it cannot ensure that the applicants and grantees understand the consequences of not being truthful, accurate, and complete during the life cycle of the grant.

The OIG therefore presents these considerations to the Agency:

- Determine how to further highlight the criminal, civil, and administrative consequences of fraudulent conduct by grant applicants, grantees, and subrecipients—for example, by detailing these consequences at public EPA grant information sessions and on the EPA grant website.
- Revise its general terms and conditions for grants and subawards to more prominently inform grantees and subrecipients of the need for truthful conduct and to address the consequences of fraud. These revisions could include listing potential criminal statutes that may be violated.

By taking these steps, the EPA can increase the likelihood that potential fraudulent conduct will be deterred at the outset and that funding recipients will be more fully aware of the potential consequences they face if they are not faithful stewards of federal dollars.

The EPA Needs to Add OIG Reporting Requirements and Whistleblower Protection Provisions to Its Standard Terms and Conditions: Generally, [2 C.F.R. § 200.113](#) requires grant applicants and grantees to disclose all violations of federal criminal law to the awarding agency that involve fraud, bribery, or gratuity violations that could potentially affect a federal award. Unlike its analogous provision in the Federal Acquisition Regulation, 48 C.F.R. § 52.203-13, this provision does not explicitly require that notice be provided directly to the OIG.

Additionally, [2 C.F.R. § 200.300](#) provides that the awarding agency must communicate all relevant statutory and national public policy requirements, including prohibitions against discrimination, to each grantee and incorporate them either directly or by reference in the terms and conditions of the federal award. The Uniform Grant Guidance similarly provides that grantees are responsible for complying with all requirements of their awards, and it further references the statutory requirements for whistleblower protections at [41 U.S.C. § 4712](#).

Other than generally requiring that instances of research misconduct be reported to the OIG, the *EPA General Terms and Conditions Effective October 1, 2022* does not contain any information regarding when and how to report instances of fraud, waste, and abuse to the OIG. And while part 200 of the Uniform Grant Guidance is incorporated by reference into the *EPA General Terms and Conditions Effective October 1, 2022*, grantees may not be specifically aware of the rights and remedies afforded to whistleblowers as provided in 41 U.S.C. § 4712. In addition, the *EPA Subaward Policy* is silent as to providing information with respect to reporting fraud to the OIG and whistleblower protections. The EPA could look to [48 C.F.R. § 52.203-13](#), [48 C.F.R. § 52.203-17](#), and [48 C.F.R. § 1552.203-71](#) as models, as these three regulations provide language, which is required to be included in certain contracts, that is related to OIG reporting requirements, whistleblower protections, and OIG Hotline posters

The OIG therefore presents these considerations to the Agency:

- Revise its general terms and conditions for grants and subawards to include information regarding reporting fraud, waste, and abuse to the OIG in a manner similar to [48 C.F.R. § 52.203-13](#).
- Revise its general terms and conditions for grants and subawards to include information regarding whistleblower protections set forth in 41 U.S.C. § 4712 in a manner similar to [48 C.F.R. § 52.203-17](#).
- Revise its general terms and conditions for grants and subawards to require the display of OIG Hotline posters in a manner similar to [48 C.F.R. § 1552.203-71](#).
- Determine what additional steps can be taken to train grantees and subrecipients on identifying potential fraud and reporting suspected fraud to the OIG. These steps could include regularly notifying grantees and subrecipients of their duty to report suspected fraud to the OIG.

If the EPA does not include this information in its general terms and conditions or provide training for grantees and subrecipients, grantee and subrecipient staff may be unaware of their whistleblower rights and remedies, as well as how and where to report suspected fraud, waste, and abuse.

The EPA Must Ensure that the OIG Has Timely Access to the Records and Personnel of Grantees and Subrecipients: Audits and evaluations of federal awards serve to help identify material weaknesses

in grantee and subrecipient internal controls and potential fraud, waste, and abuse. Accordingly, [2 C.F.R. § 200.503](#) empowers the OIG to conduct audits and evaluations of federal awards. This can only be done when the OIG has access to the records and personnel of grantees and subrecipients. Section 6 of the Inspector General Act, [5 U.S.C. § 406](#), authorizes the inspector general “to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the [EPA].” Furthermore, [2 C.F.R. § 200.337](#) requires that a “non-Federal entity”—in other words, a grantee or subrecipient—provide the Agency or the inspector general access “to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award,” as well as “timely and reasonable access to the non-Federal entity’s personnel for the purpose of interview and discussion related to such documents.”

As discussed above, *EPA General Terms and Conditions Effective October 1, 2022* is applicable to EPA grants, and the *EPA Subaward Policy*, is applicable to subawards and contracts entered into by the grantee. These terms and conditions do not contain any information on the Agency’s or the OIG’s right to access grantee and subrecipient information or interview their personnel.

The OIG therefore presents this consideration to the Agency:

- Revise its general terms and conditions for grants and subawards to include the requirement that the EPA and the OIG have access to information and personnel relevant to a federal award in a manner consistent with 2 C.F.R. § 200.337.

My office is notifying you of these issues so that the Agency may take whatever steps it deems appropriate. If you decide it is appropriate for your office to take or plan to take action to address these matters, the OIG would appreciate notification of that action. Should you have any questions regarding this memorandum, please contact Special Agent in Charge [REDACTED] at [REDACTED] or via email at [REDACTED]@epa.gov.

cc: Sean W. O’Donnell, Inspector General