



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 30, 2018

THE DIRECTOR

M-18-14

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Mick Mulvaney
Director

SUBJECT: Implementation of Internal Controls and Grant Expenditures for the Disaster-Related Appropriations

Overview

On February 9, 2018, the President signed into law the Bipartisan Budget Act of 2018 (Public Law 115-123) which, among other things, provided \$84.4 billion in emergency supplemental appropriations to respond to and recover from recent hurricanes, wildfires, and other disasters. This Act also amended section 305 of division A of the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017 (Public Law 115-72) to apply improper payment reporting and grant expenditure requirements to funds provided in division B of Public Law 115-123, and to modify improper payment reporting requirements for funds appropriated in division B of Public Law 115-56 and division A of Public Law 115-72.

The Director of the Office of Management and Budget (OMB) is required to issue standard guidance for federal agencies to use in designing internal control plans, reporting improper payments and accounting for grant expenditures for applicable funding.

Agencies should use this guidance to inform and develop their internal control plans that are due to OMB pursuant to section 305(a) of Public Law 115-72, as amended. Agencies may leverage information contained in their risk profiles, as illustrated in OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, to help inform their internal control plan.

Summary

This memorandum provides guidance to agencies to implement the Bipartisan Budget Act of 2018. In particular, this memorandum explains agency responsibilities for managing disaster relief funds. This includes:

- identifying and documenting incremental risks and mitigating controls with robust criteria related to the disaster relief funding;

- noting the applicability of the Improper Payments Information Act of 2002 to disaster relief funds;
- documenting the linkages between risks related to disaster and emergency funding and efforts to address known internal control risks; and
- ensuring that grantees expend all awarded disaster relief funds within the 24-month period following the agency's obligation of those funds, unless waived by OMB.

Robust Criteria Related to the Disaster Relief Funding

As required by OMB Circular No. A-123, each agency has overall responsibility for establishing internal controls to manage the risk of fraud. Agencies must use a risk-based approach to design and implement financial and administrative controls to identify and mitigate fraud risks. In assessing risk in disaster situations, agencies should leverage their existing enterprise risk management processes, including assessments that contributed to the development of initial risk profiles.

In disaster situations, fraud risks are higher than under normal circumstances because the need to provide services quickly can hinder the effectiveness of existing controls and create additional opportunities for individuals to engage in fraud. As a result, Federal managers face the additional challenge of balancing their mission to provide assistance quickly with implementing controls to address the increased risk of fraud. A risk-based approach includes establishing risk tolerances in disaster situations. Agencies must balance their priorities to fulfill the program mission. Risk tolerance reflects a Federal manager's willingness to accept a higher level of fraud risks and may vary depending on the circumstances of the program. When determining risk tolerances in disaster situations, managers must weigh the program's operational objectives against the objective of lowering the likelihood of fraud.

Applicability of Improper Payments Reporting

All programs and activities expending more than \$10,000,000, as provided in division B of Public Law 115-123, division B of Public Law 115-56, and division A of Public Law 115-72, in any one fiscal year shall be deemed to be "susceptible to significant improper payments" for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), notwithstanding section 2(a) of such Act. Programs or activities susceptible to significant improper payments shall produce and report an improper payment estimate starting with the Fiscal Year 2019 reporting period, to the extent possible. Agencies should refer to OMB Circular A-123, Appendix C for sampling and estimation plan requirements.

Agencies should implement improper payment measurements required in the most cost-effective manner. For example, an agency may group disaster related programs and activities in a reasonable and appropriate manner to decrease the number of required improper payment measurements. Whenever possible, agencies should leverage resources already devoted to improper payment related activities.

Documenting the Linkages between the Incremental Risks Related to Disaster and Emergency Funding and Efforts to Address Known Internal Control Risks

As a reminder, agencies in receipt of disaster relief and emergency funding must provide reasonable assurance that their internal control plans specifically address disaster relief. As stated above, these plans should complement risk management practices as directed in OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*.

Expenditure of Grant Funds

Funds for grants provided by division B of Public Law 115-56, division A of Public Law 115-72, and division B of Public Law 115-123 must be expended by the grantees within the 24-month period following the agency's obligation of those funds, unless waived by the Director of OMB. Further, each agency must include a term in the grant's terms and conditions to require the grantee to return to the agency any funds not expended within the 24-month period following the agency's obligation of funds for the grant.

To meet this statutory requirement, agencies must specify criteria for approval of grant applications or proposed plans for the use of grant funds, and ensure each proposed grant activity has clear timelines for completion within the period available for grantee expenditure. While OMB may waive or extend this period for certain programs and expenditures, each agency must ensure that any such requests are limited to only those activities that are long-term by design or where it is impracticable to expend funds within the 24-month period and still achieve program missions. OMB will grant waivers only on a case-by-case basis, where such requests are justified by compelling legal, policy, or operational challenges and consistent with applicable laws. A grant funds extension request note and template for extension request are attached to this memorandum.

Points of Contact

For questions regarding internal control plan submissions, contact Dan Kaneshiro at Daniel_S_Kaneshiro@omb.eop.gov. For questions regarding the applicability of disaster funds to improper payments reporting, contact Heather Pajak at Heather_C_Pajak@omb.eop.gov. For questions regarding the expenditure of grant funds, contact Gil Tran at Hai_M._Tran@omb.eop.gov.

Attachments

1. Grant Funds Extension Request Note
2. Template for Extension Request

GRANT FUNDS EXTENSION REQUEST NOTE UNDER SECTION 305(c)

This note provides instructions on the process for requesting a waiver from the requirements of section 305(c) of the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-72), as amended by the Bipartisan Budget Act of 2018 (Public Law 115-123). Section 305(c) requires that all agencies expend grant funds¹ within 24 months of the time of obligation, absent a waiver from the Office of Management and Budget (OMB). Agencies should work with grantees to expend funds as quickly as possible programmatically and request waivers only for those activities or programs that are specifically designed to be long-term in order to achieve their objectives. If OMB does not grant a waiver, grant agreements must specify that grantees must return to that agency any funds not expended within the 24-month period.

In evaluating waiver requests, OMB will consider the following criteria: (1) the optimal timeline for achieving the stated objectives of the program or activity; (2) the historical outlay rate of the program; (3) the ability of the program to accelerate from its historical outlay rate; and (4) internal controls, including agency capacity for grantee oversight, that are likely to promote accountability in the event a waiver is granted.

Attached to this note is a template that agencies must complete as part of any waiver request. Each waiver request should specify the types of activities and associated funds within the program or activity that require a waiver. Please supplement the template with documentation supporting specific factual claims identified in the responses.

To maximize the efficiency of this process, we ask that agencies coordinate among their components to consolidate waiver requests, along with supporting documentation, into a single document per waiver submission, to the extent possible. Please submit completed submissions at MAX page.

To streamline review, OMB will coordinate with agencies to process waiver requests in several phases, with dates noted below:

- For all waiver requests received by OMB **on or before April 13, 2018**, OMB will provide a preliminary response and/or a request for additional information to agencies by **April 30, 2018**.
- For all waiver requests received **on or before May 31, 2018**, OMB will provide a preliminary response and/or a request for additional information by **June 15, 2018**.
- An agency should notify OMB by **July 31, 2018**, if it expects to request additional waivers.

¹ Section 305(c), as amended, is applicable to grant funding provided under division B of Public Law 115-56, division A of Public Law 115-72, and division B of Public Law 115-123.

OMB will work collaboratively with agencies on waiver requests and will notify them of its decisions. As required by statute, OMB will submit a written justification for all waivers to the Committees on Appropriations of the House of Representatives and the Senate.

Please note an agency may begin to announce and obligate appropriated grant funds effective immediately and without obtaining a waiver, provided the statutorily-required term concerning the 24-month deadline is included in the announcement and award agreement. If such awards are subsequently waived from the requirements of section 305(c), an agency must take the necessary administrative steps to apply the appropriate internal controls to monitor these awards. For such awards, each agency should submit waiver requests as soon as possible.

If you have any further questions, please reach out to our staff, Gil Tran (202-395-3052) and Mary Tutman (202-395-1703).

ATTACHMENT 2: TEMPLATE FOR EXTENSION REQUEST

IDENTIFY WAIVER	
1a. Agency Name	<i>Enter your agency name</i>
1b. CFDA program name	<i>Enter the CFDA program name</i>
1c. CFDA number	<i>Enter the CFDA program number</i>
1d. CFDA program description	<i>Enter the created CFDA program description</i>
1e. Total program funding level	<i>Enter the total amount provided for this program</i>
1f. Type of program activities for which a waiver is requested	<i>Provide a brief description of the activities or programs for which a waiver is requested.</i>
1g. Total amount of funds for which a waiver is requested	<i>Amount of funds for which waiver is requested. Please break out if there are different amounts with different justifications. For example, an agency may request a waiver for two or more groups of projects within a program.</i>
For each group of projects (per 1g), please complete 2 through 5b on a separate copy of the template.	
DESCRIPTION	
2: Describe waiver request(s)	
<i>Describe the specific activities or programs that would receive a waiver and the dollar amount associated with each.</i>	
IUSTIFICATION	
3a. Explain the reason a waiver is needed	
<i>Explain why a waiver is being requested, including all relevant compelling legal, policy, or operational challenges.</i>	
3b. Stakeholders	
<i>Identify all stakeholders, including State or local entities, their role in moving the project forward, and the impact on these stakeholders that a waiver would have.</i>	
3c. Regulations	
<i>Describe any legal, regulatory, or permitting issues that impact the completion of the project or category of</i>	
IMPACT	
4a. Typical expenditure rates	
<i>Describe the typical expenditure rates for the program or projects for which the waiver is requested, including what percentage of the money is typically spent within 2 years from the time of obligation.</i>	
4b. Revised deadline for completion	
<i>When the entire amount can be expended, if not within 2 years.</i>	
4c. Risk for not receiving waiver	
<i>Describe the risks associated with NOT granting this waiver, such as the specific needs that may not be met on the ground because particular projects cannot be completed within 24 months. Please also indicate the date at which those risks present challenges for the agency, if applicable.</i>	
CONTROLS	
5a. Monitoring process and internal controls to compensate for the extended deadline	
<i>Describe the monitoring process and internal controls the agency has to ensure sustained progress of waived</i>	
5b. Agency Reporting	
<i>Describe how the agency currently reports on this program to OMB.</i>	
ATTACHMENTS	
<i>List any additional documentation provided with this request.</i>	
<i>List agency point of contact with email address and telephone number</i>	