



# OIG Office of Inspector General


U.S. Department of State • Broadcasting Board of Governors

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December 8, 2015

## MEMORANDUM


TO: A/OPE/FA – Jeffrey D. Johnson, Director

FROM: OIG/INV – Geoffrey A. Cherrington, Assistant Inspector General for Investigations 

Attached for your information and review is the Office of Inspector General (OIG) for the Department of State (Department) and the Broadcasting Board of Governors (BBG), *Management Assistance Report: Mandatory Disclosure Language in Department of State Grants and Assistance Agreements* (INV-15-02). It was prepared by the OIG's Office of Investigations, under the Inspector General's continuing responsibility to assist management through independent reviews of Department operations. Please provide comments to this report within 10 business days of receipt.

The official response should be signed, dated, and printed on letterhead and should indicate agreement or disagreement with the recommendation. If the response indicates disagreement with the recommendation, the response should provide the reasons for disagreement, propose an alternate remedy to address the findings, and provide all documents relevant to your response. Please have your staff send an electronic copy of the official response to me, Geoffrey Cherrington, Assistant Inspector General for Investigations, at @state.gov.

To ensure that OIG's work products are timely and responsive to its stakeholders, OIG policy is to issue final reports without comments if the comments are not received by the date requested.

OIG appreciates the cooperation and assistance provided by your staff. If you have any questions, please contact me at @state.gov.

Attachment: As stated.



# OIG

## Office of Inspector General

U.S. Department of State • Broadcasting Board of Governors

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INV-15-02

Office of Investigations

December 2015

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# Management Assistance Report: Mandatory Disclosure Language in Department of State Grants and Assistance Agreements

## MANAGEMENT ASSISTANCE REPORT

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## Summary of Report

During the course of investigative work related to Lead Inspector General for Overseas Contingency Operations (LIG-OCO) efforts, the Office of Inspector General (OIG) for the Department of State (Department) and the Broadcasting Board of Governors (BBG) identified opportunities to strengthen the requirements for reporting fraud, waste, and abuse related to grants, cooperative agreements, and other Federal assistance awards.

## BACKGROUND

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OIG's Office of Investigations is performing an assessment to proactively gather and analyze information related to grant funding of Operation Inherent Resolve as part of the LIG-OCO Congressional mandate. A portion of this assessment concerned the review of line nine, *Humanitarian Support*, of the Administration's comprehensive nine lines of effort strategy to counter the Islamic State of Iraq and the Levant (ISIL), with our focus on the crisis in Syria and Iraq. This support was in the form of grants, cooperative agreements, and other Federal assistance awards.

## FINDINGS

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The Code of Federal Regulations (CFR) provides guidance to Federal agencies on how to administer grants, cooperative agreements, and other Federal assistance awards. Part 200 of 2 CFR establishes certain uniform requirements for Federal assistance awards. One of these requirements is stated in 2 CFR Section 200.113 (December 26, 2014), and mandates certain disclosures:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII-Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 *Remedies for noncompliance*, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

The Department uses Form DS-1909 for Federal assistance awards. That form contains a section entitled "Agreement" in which recipients are obligated to sign and agree to comply with all requirements. Specifically, under the heading "Agreement," the award form states:

The recipient agrees to execute the work in accordance with the Notice of Award, the approved application incorporated herein by reference or as attached, and 2 CFR Parts 200 and 600 including any subsequent revisions.

The "Agreement" section also provides:

By signing this Federal award, the recipient acknowledges that it will comply with Federal regulations, the Terms and Conditions, and any Special Award Conditions associated with this award. Receipt of the recipient's signature and return of the Federal Award Coversheet is required within ten (10) business days of the Grants Officer's signature.

OIG's assessment found that the mandatory disclosure provision in 2 CFR Section 200.113 is incorporated by reference into the award, when the recipient agrees to comply with 2 CFR Part 200, among other terms. However, the specific requirement of 2 CFR Section 200.113 is not expressly referred to or cited.

OIG also reviewed the "Terms and Conditions" referenced in the "Agreement" section of the award form (a document called *Standard Terms and Conditions*). The "Introduction" section reflects that the award recipient and any sub-recipient must, in addition to the assurances and certifications made as part of the award, comply with all applicable terms and conditions during the project period. The *Standard Terms and Conditions* include and state the specific requirements bearing on particular issues, such as conflict of interest; retention and access requirements for records; debarment and suspension; certification regarding lobbying; religious persecution; and trafficking in persons. In addition, under Section V, an award recipient is responsible for notifying the Department of "any significant problems relating to the administrative, programmatic or financial aspects of the award." However, the *Standard Terms and Conditions* do not reference or set forth expressly the mandatory disclosure requirement regarding criminal activity in 2 CFR Section 200.113.

OIG believes Form DS-1909 should expressly reference the disclosure requirement in 2 CFR Section 200.113 to ensure that grantees are aware of this provision when they accept a Federal assistance award. Placing award recipients on notice of the requirement to report violations of Federal criminal law could enhance detection and investigation of fraud, bribery, and gratuity violations related to such awards.

In addition, the requirement for mandatory disclosure could be further strengthened by implementing a best practice identified at the U.S. Agency for International Development (USAID). Specifically, in its *Standard Provisions for U.S. Nongovernmental Organizations*— which is similar to the Department's *Standard Terms and Conditions*—USAID includes a variation of the mandatory disclosure clause, requiring that the USAID OIG be notified of all potential fraud related to the grant or cooperative agreement award.

Specifically, USAID uses the following clause:

Consistent with 2 CFR §200.113, applicants and recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Sub-recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the prime recipient (pass-through entity) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321).<sup>1</sup>

According to USAID officials, including this revised requirement in grant and cooperative agreements has resulted in increased reporting from its grant and cooperative award recipients of potential civil, criminal, and administrative issues.

## RECOMMENDATIONS

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**Recommendation 1:** OIG recommends the Department include the complete citation for 2 CFR 200.113, *Mandatory Disclosure*, in its *Standard Terms and Conditions*, and specifically cite 2 CFR 200.113 in all grants, cooperative agreements, and other Federal assistance awards.

**Recommendation 2:** OIG recommends the Department insert the following language in the Department's *Standard Terms and Conditions* for grants, cooperative agreements, and other Federal assistance awards:

Consistent with [2 CFR §200.113](#), applicants and recipients must disclose, in a timely manner, in writing to the Office of Inspector General (OIG) for the Department of State and the Broadcasting Board of Governors, with a copy to the cognizant Grants Officer, all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award. Sub-recipients must disclose, in a timely manner, in writing to the OIG and to the prime recipient (pass-through entity) all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in §200.338, *Remedies for noncompliance*, including suspension or debarment.

Disclosures must be sent to:

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<sup>1</sup> USAID highlights this specific section in its *Standard Provisions for U.S. Nongovernmental Organizations* in order to identify it as a new requirement.

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Phone: 1-800-409-9926 or 202-647-3320

**Recommendation 3:** OIG recommends the Department amend all active grants, cooperative agreements, and other Federal assistance awards to include the Department's revised *Standard Terms and Conditions*.



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