



Independent observer
of the Global Fund

"Burden of Proof" is on the PR in Cases of Questionable Expenses, says OIG

Report describes other deficiencies that could negatively impact the Fund and the effectiveness of the OIG

Many principal recipients (PRs) do not understand that they bear the “burden of proof” in situations where grant expenditures cannot be readily accounted for. In other words, if the PR records an expenditure in its books, but is unable to provide adequate documentation for the expenditure, or if there is some doubt about whether the expenditure was included in the work plan and budget – then, it is the PR’s responsibility to show that the expenditure was legitimate. The Global Fund is not required to prove that the expenditure was not legitimate.

This is the position taken by the Office of the Inspector General (OIG) in its progress report for the period March to October 2010.

According to the OIG, many PRs are not able to identify how all of the grant monies have been used. In addition, the OIG said, many PRs do not understand that when they are unable to demonstrate that an expenditure is legitimate, the amounts involved should be clearly identified as a “loss,” and subject to reimbursement. The OIG said that these misunderstandings persist despite the fact that the Global Fund’s Legal Services Unit recently issued an opinion on this topic. The OIG called on the Global Fund Secretariat to transmit to all PRs a copy of the opinion and to reinforce its messages.

In addition, the OIG said that a significant percentage of the losses being sustained by the Global Fund are at the level of sub-recipients (SRs) and suppliers. The OIG recommended that the Global Fund Secretariat send a briefing note that “makes clear that the PR is responsible for losses sustained by the SRs, and may seek indemnity from the SRs separately.”

These are some of what the OIG calls “a series of significant potential deficiencies” that pose serious risks to the Global Fund and to the effectiveness of the OIG. Other deficiencies identified by the OIG concerned money laundering; the lack of privileges for Global Fund staff working in-country; the grant agreement used for U.N. agencies acting as principal recipient (PR); and co-mingling of grant funds. Below, we report on what the OIG said regarding each of these deficiencies.

Money laundering

The OIG said that the Global Fund needs to take the risk of money laundering more seriously. It stated that “there appears to be a lack of understanding of the nature of money laundering risk,” and that monitoring and enforcement of these risks were inadequate. Specifically, the OIG said, provisions in the standard grant agreement are insufficient, despite the fact that they have undergone legal review by outside authorities. The OIG cited the recent case of Nigeria where activity typical of money laundering went undetected for some time (see [report](#) in GFO). The PR, the local fund agent (LFA) and the Secretariat did not identify the issue until the OIG conducted an audit and an investigation.

The OIG said that the Global Fund needs to go beyond simply saying in grant agreements and related documents that “money laundering” is prohibited, because “money laundering is a complex set or series of separate (sometimes seemingly innocuous) acts, taken together, to achieve a certain purpose – namely, disguising or transferring ill-gotten gains into a useable form to avoid detection and seizure. Many of the individual parts, or acts, may not be illegal in and of themselves, but yet indicative of an underlying, more nefarious, purpose.”

The OIG said that it had proposed that the Global Fund adopt certain restrictions on typical activities that are high risk, including transferring funds by wire to third parties that are not directly involved in grant implementation, but that despite what happened in Nigeria, its recommendation had not been adopted.

Lack of privileges

A lack of privileges and immunities for Global Fund staff working in-country exposes staff to substantial physical safety risk, a lack of protection from criminal and civil process, and other risks associated with travel and working in-country, according to the OIG.

The OIG said that it strongly supports the Global Fund Secretariat’s attempts to persuade countries to sign the Agreement on Privileges and Immunities, which was endorsed by the Global Fund Board in December 2009. (In December 2010, GFO [reported](#) that only one country – Moldova – had, to that date, granted Global Fund staff these privileges and immunities.)

Because of the seriousness of the issue, the OIG said, disbursements of funds should be conditional on a commitment from the country that it will bestow the same privileges on Global Fund staff working in country that staff from all other intergovernmental organisations enjoy. (However, thus far the Global Fund has not imposed such a condition.)

Grant agreements with UN agencies

The OIG said there is a lack of clearly defined language in the standard agreement with U.N. agencies acting as PRs, setting forth the obligations on the part of PRs and SRs to cooperate with OIG audits and

investigations. The OIG was referring mainly to the United Nations Development Programme (UNDP), which is a PR for several grants, and which has refused to grant the OIG access to its books.

Co-mingling

The OIG said that the co-mingling of grant funds is a major problem affecting many audits and investigations, and hampering the ability of the OIG to identify the full uses to which grant funds have been put. The OIG said that “it is clear that some entities are using multiple accounts, and co-mingling of funds, as a vehicle to cloud the nature of the true expenditures, to make it difficult to ascertain how the funds have been spent, and to disguise fraud and misappropriation.”

The OIG recommended that co-mingling should be specifically prohibited, and that the PR should be sanctioned if it co-mingles grant funds with other income sources. According to the OIG, requiring separate bank accounts (for each income source) is not always a solution to the co-mingling problem because co-mingling has been known to occur even when there are separate bank accounts. The OIG added that it is likely that single-stream funding (under the new grant architecture) will only compound the problem.

“The Office of the Inspector General Progress Report for March-October 2010 and 2011 Audit Plan and Budget” is available [here](#).

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