



Recommendation 71-9

Enforcement of Standards in Federal Grant-in-Aid Programs

(Adopted December 7, 1971)

Federal agencies annually disburse billions of dollars in grants-in-aid to State and local governments and to private entities to subsidize activities in such areas as welfare, housing, transportation, urban development and renewal, law enforcement, education, pollution control and health. While State and local governments and private organizations are the direct recipients of the grants, the intended ultimate beneficiaries of the grant programs are private persons helped by the expanded level of support or services made possible by Federal funds.

In administering these grants both public and private grantees must observe the Federal grant standards established to assure the accomplishment of Federal purposes. Federal agencies have often encountered difficulty in enforcing compliance by the grantees with the Federal standards. A factor contributing to this difficulty is that many Federal agencies do not have adequate procedures for resolving questions of compliance and for handling complaints by private persons affected by a grant-in-aid program that the program does not comply with Federal standards. A further contributing factor is that the principal sanction presently available to Federal agencies for securing compliance is to cut off the flow of Federal funds. This sanction raises a serious problem because, unless its threatened imposition prompts compliance, it stops worthwhile programs and adversely affects the interests of the innocent private persons whom the Congress intended to benefit through the program of Federal financial assistance.

To aid in alleviating this situation the following recommendations are proposed with respect to each Federal program in aid of State, local or private activities through which support or services are provided to individual beneficiaries or to the public generally. However, the recommendation does not apply to research, training, or demonstration grants to government units or private organizations or individuals, or to grants such as fellowship grants to individuals that primarily benefit the recipients of the grants.



Recommendation

A. The Federal Administrative Complaint Procedure

The Federal grantor agency should have an administrative procedure for the receipt and impartial consideration of complaints by persons affected by the grant-in-aid program that a plan, project application or other data submitted by a grant applicant or grantee as a basis for Federal funding does not meet one or more Federal standards. This procedure should afford the complainant an opportunity to submit to the grantor agency for its consideration data and argument in support of the complaint, and should afford the grant applicant or grantee involved a fair opportunity to respond. If the agency determines that the complaint is apparently ill-founded or is insubstantial, it should notify the complainant of its determination and should state in writing the reasons therefor. If the agency determines that the complaint appears to be substantial and supported by the information at hand, it should so notify both the complainant and the grant applicant or grantee of its present determination in this respect and should state in writing the reasons therefor. If the agency exercises discretion not to make a determination on one or more issues raised by a complaint, it should so notify the complainant in writing. The agency should pass upon all complaints within a prescribed period of time.

The complaint procedure administered by the Federal grantor agency should also provide for the receipt and impartial consideration of complaints that a grantee has in its administration of the funded program failed to comply with one or more Federal standards. It is anticipated that many grantor agencies will find it necessary to limit their consideration of such complaints to situations in which the complainant raises issues which affect a substantial number of persons or which are particularly important to the effectuation of Federal policy and will, therefore, dispose of most individual complaints concerning grantee administration by referring the complainant to such complaint procedures as are required to be established by the grantee. The grantor agency should seek by regulation to define the classes of cases that it will consider sufficiently substantial to warrant processing through the Federal complaint procedure and those classes of cases wherein complainants will be required to pursue a remedy through available complaint procedures administered by the grantee.



B. The Grantee's Administrative Complaint Procedures

The Federal grantor agency should require as a grant condition the establishment by the grantee of procedures to handle complaints concerning the grantee's operation of the federally assisted program. These procedures should afford any person affected by an action of the grantee in the operation of the program a fair opportunity to contest that action. The "fair opportunity" to contest will necessarily vary with the nature of the issues involved and the identity and interests of the complainant. In all cases, however, the complainant should have the right to submit to the grantee for its consideration data and argument in support of the complainant's position.

C. The Information System

The Federal grantor agency should seek to assure that persons affected by a grant-in-aid program receive adequate information about the program in order that they may take advantage of the Federal and the grantee complaint procedures. The Federal grantor agency should require as a grant condition that all program materials (regulations, handbooks, manuals, etc.) governing the grantee's administration of a program supported in whole or in part by Federal grant-in-aid funds and all plans, applications and other documents required to be submitted to the Federal agency as a condition to the receipt of Federal funds should be readily accessible to persons affected or likely to be affected by the operation of the funded program. Plans, applications and other documents that provide the basis for Federal funding should be made readily accessible to interested persons no later than the time of their submission to the grantor agency for approval and at an earlier time when required by law.

The Federal grantor agency should seek to assure that the grantee's system for dissemination of program materials and grant submissions takes account of the nature, location and representation of affected persons. For example, as a part of a plan to make such materials readily accessible, program information might be deposited not only in the offices of the grantee but also in public and university libraries and in the offices of affected interest groups and their legal representatives. It might also be necessary to require the provision of descriptive summaries of technical rules or project applications or to require an oral explanation of program features, for example, the complaint procedures, which are critical to the protection of a beneficiary's interests. The Federal agency should make parallel efforts to disseminate materials relating to its administration of the Federal grant program.



D. Range of Sanctions

The Federal grantor agency should seek to develop an adequate range of sanctions for insuring compliance with Federal standards by grantees that apply for or receive Federal financial assistance. The sanction of the total denial or cut-off of Federal funds should be retained and used where necessary to obtain compliance, but the agency should have available lesser sanctions that do not result in the prevention or discontinuance of beneficial programs and projects. This range of sanctions should include in appropriate cases:

1. The public disclosure by the agency of a grantee's failure to comply with Federal standards and an indication of the steps believed by the agency now to be appropriate.
2. An injunctive action brought by the agency or the Department of Justice in the Federal courts to require the grantee to fulfill any assurances of compliance with Federal standards made by the grantee or to enforce the Federal standards attached to the grant.
3. The disallowance as a program or project cost of an expenditure by the grantee that does not conform with Federal standards, or other partial denial or cut-off of funds that affects only that portion of a program or project that is not in compliance with Federal standards.
4. The imposition on a grantee who has not complied with Federal standards of additional administrative requirements specially designed to assure that the grantee brings its operations into compliance with Federal standards and redresses the effects of past noncompliance.
5. The transfer of a grant, or the awarding of subsequent grants under the same or related grant-in-aid programs, to a different grantee if the original grantee violates Federal standards.

Where an agency lacks statutory authority to invoke one or more of the above sanctions and such authority would provide an appropriate means of insuring compliance with Federal standards in a grant-in-aid program administered by the agency, it should seek the necessary authority from the Congress.

E. Other Performance Incentives

The agency should also consider the provision of incentives, such as the contribution of an increased matching share or the awarding of additional grant funds, to grantees who fulfill certain Federal goals. Where the agency lacks statutory authority to provide compliance



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incentives and such authority would provide an appropriate means of ensuring effectuation of Federal objectives in a grant-in-aid program administered by the agency, it should seek the necessary authority from the Congress.

Citations:

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