

COPY OF COMMENTS RECEIVED

REGARDING

PROPOSED RULE

29 ILL. ADM. CODE 120

SUMMARY OF THE COMMENTS RECEIVED  
AND AGENCY RESPONSES  
29 ILL. ADM. CODE 120

**Commenter:** Jared Hoffman, Legislative Associate, Jewish United Fund

**Organization:** Safeguard Illinois Communities Coalition

**Comment: Section 120.20: Eligibility**

***IEMA-OHS Proposed Rule Language:*** “c) Eligible projects shall not duplicate, in part or in whole, a project included under any awarded federal grant or in a pending federal grant application.”

***Coalition Proposed Language:*** “c) Eligible projects shall not duplicate, in part or in whole, a project included under any awarded federal grant or in a pending federal grant application in order to ensure that funds awarded under the program are used to supplement existing federal funds and not replace (supplant) funds appropriated for the same purpose. Projects that utilize the same project category (i.e., Authorized Equipment List project category) listed under a federal grant or in a pending federal application shall be considered eligible if they are for demonstrably distinct items or activities.”

**Response:** IEMA-OHS accepts the Coalition’s proposed language in part. IEMA-OHS will change the language to read as follows:

c) Eligible projects shall not duplicate, in part or in whole, a project included under any awarded federal grant or in a pending federal grant application in order to ensure that funds awarded under the program are used to supplement existing federal funds and not replace, i.e., supplant, funds appropriated for the same purpose.

IEMA-OHS is seeking to build consistency by including the same allowable projects across the Authorized Equipment List (AEL) categories for the State program that are included in the federal program. However, IEMA-OHS receives multiple calls daily from grantees with multiple grant awards that struggle with keeping projects that cross over multiple years of funding straight. Using the same AEL on both the federal and State grants is extremely difficult to track projects for the grantees and their vendors and the State. In addition, due to federal supplanting regulations, projects initiated with State funds can't be included on a future federal application in order to stay in federal compliance. The Federal Emergency Management Agency (FEMA) awards projects by AEL category in order to allow flexibility from the grantee to address vulnerabilities across the scope of projects within that AEL Category without having to request budget modifications.

**Comment: Section 120.20: Eligibility**

***IEMA-OHS Proposed Rule Language:*** “d). Eligible Projects...3) The Applicant may request up to 5% of the total grant award for management and administration costs. Such management and administration costs shall be included in the requested grant award amount, rather than in addition to the requested amount.”

***Coalition Proposed Language:***

“d). Eligible Projects...3) The Applicant may request up to 5% ~~10%~~ of the total grant award for management and administration costs. Such management and administration costs shall be included in the requested grant award amount, rather than in addition to the requested amount.”

**Response:** IEMA-OHS does not agree with making this change. IEMA-OHS is trying to ensure that the limited amount of money appropriated for the grant program is used to fund as many projects as possible. Increasing the funding for management and administration costs will diminish the funding available for the actual projects. The 5% management and administration costs matches the federal program; thus, providing consistency across both programs. (See page 27 of the federal NOFO, Nonprofit Organization (Subrecipient) for NSGP-S and NSGP-UA M&A) The management and administration costs are not the same as indirect costs outlined in 2 CFR 200.414(f) and 44 Ill. Adm. Code 7000.420.

**Comment: Section 120.30: Application Requirements**

***IEMA-OHS Proposed Rule Language:*** “c). On the application, applicants shall:...4) Provide a specific description of the applicant's profile, ideology, mission, and beliefs and a specific explanation of how the organization is high risk for threats, attacks, and acts of terrorism;”

***Coalition Proposed Language:*** “c). On the application, applicants shall:...4) Provide a specific description of the applicant's profile, ideology, mission, and beliefs and a specific explanation of how the organization is high risk for threats, attacks, ~~and~~ or acts of terrorism;”

**Response:** The Agency agrees with this change in order to match the statutory language in Section 5(g-5) of the IEMA Act [20 ILCS 3305].

**Comment: Section 120.30: Application Requirements**

***IEMA-OHS Proposed Rule Language:*** “c). On the application, applicants shall:...6) Provide specific evidence and information identifying and substantiating a high risk designation, including prior or current threats, attacks, or acts of terrorism against the not-for-profit organization;”

***Coalition Proposed Language:*** “c). On the application, applicants shall:...6) Provide specific evidence and information identifying and substantiating a high risk designation, including prior or current threats, attacks, or acts of terrorism against the not-for-profit organization or organizations closely related to the not-for-profit organization.;”

**Response:** The Agency agrees to change the language to allow examples of threats, attacks, or acts of terrorism against similarly-related organizations to the applicant; however, the Agency will change the language as follows:

c) On the application, applicants shall...6) Provide specific evidence and information identifying and substantiating a high risk designation, including prior or current threats, attacks, or acts of terrorism against the not-for-profit organization. The applicant may also include information regarding threats, attacks, or acts of terrorism against other similar organizations that have the same profile, ideology, mission, or beliefs that they believe helps substantiate the high risk designation for their organization;

**Comment: Section 120.40: Application Submission and Notification of Grant Award**

***IEMA-OHS Proposed Rule Language:*** “k) Notification will be sent to the point of contact indicated in the application when final grant funding allocations have been determined.”

***Coalition Proposed Language:*** “k) Notification will be sent to the point of contact indicated in the application when final grant funding allocations have been determined. Unsuccessful grant applicants will be provided with an individual that the applicant can contact to obtain application feedback.”

**Response:** The Agency does not agree with adding the proposed language as there may be many reasons why the applicant was not successful. The Agency has provided and will continue to provide multiple information sessions for applicants during each funding opportunity so applicants learn how to complete an application successfully. The Agency will add an appeal process to the proposed rule that will allow applicants to appeal the Agency’s decision on the application as provided in the GATA Rule. The language will be as follows:

l) Appeals. Appeals for this grant program shall follow the process provided in 44 Ill. Adm. Code 7000.350(g). All appeals shall be submitted in writing to the Deputy Director of the Agency’s Office of Homeland Security.

**Comment: Section 120.50: Grant Agreement and Payment**

***IEMA-OHS Proposed Rule Language:*** “d). 1) For advance payments, the grantee shall submit a request as indicated in the NOFO and include the information in subsection (d)(1)(A). Approval and administration of advance payments shall be governed by subsections (d)(1)(B) through (G). A) An Advance Payment Request Cash Budget Template (Cash Budget). Cash budgets must be signed by either the Chief Executive Officer (or equivalent) or Chief Financial Officer (or equivalent) for the grantee. The executive's signature certifies that their entity complies with the requirements set forth in 2 CFR 200.302 (Financial Management) and 44 Ill. Adm. Code 7000.120(b)(i)(A) (Advance Payments). The cash budget must demonstrate the estimated monthly cash requirements for each month of the grant performance period. B) If advance payment is requested, prior to approval, IEMA-OHS will perform or secure an assessment to ensure compliance with the specific language of GATA and any rules adopted pursuant to GATA. If the assessment does not ensure compliance with GATA and the rules promulgated thereunder, then IEMA-OHS may deny the request for advance payment. Any

grantee that has a high risk category as a result of the internal control questionnaire required by GATA shall not be approved for advance payment.

C) Upon approval by IEMA-OHS, advance payments shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the grantee in carrying out the purpose of the approved project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the grantee for project costs. Additionally, the grantee must make timely payments to contractors.

D) Upon approval for advance payment, an initial payment will be processed in an amount equal to the first three months' cash requirements as reflected in the submitted advance payment cash budget.

***Coalition Proposed Language (for subsection D):***

D) Upon approval for advance payments, which can be requested and disbursed quarterly, an ~~initial~~ payment will be processed in an amount equal to the ~~first three months'~~ quarterly cash requirements as reflected in the submitted advance payment cash budget.

**Response:** The Agency does not agree to change the language to the Coalition's proposed language in subsection (b)(1)(D). IEMA-OHS will allow an initial advance payment of three months based on the Advanced Payment Cash Budget provided by the grantee. As indicated in the current subsection (b)(1)(F), subsequent payments will be made quarterly based on the invoices submitted to IEMA-OHS and will be adjusted up or down, based on a comparison of actual cumulative expenditures to cumulative advance payments, to date. This will meet the intention of the 2 CFR 200.305 and 44 Ill. Adm. Code 7000.120 by limiting the payments to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the grantee in carrying out the purpose of the approved project.

**Comment: Section 120.50: Grant Agreement and Payment**

Alternatively, we recommend that IEMA-OHS consider also adopting a model of advance payment whereby a grantee can receive up to 25% of the total award up-front and then submit the remainder of the award costs following the standard reimbursement model.

**Response:** The Agency agrees with this comment and, in accordance with 2 CFR 200.305, 44 Ill. Adm. Code 7000.120(b)(3), and Public Act 103-0588, will amend Section 120.50 as follows:

**Section 120.50 Grant Agreement and Payment**

a) IEMA-OHS shall execute a Grant Agreement with each Applicant to whom a grant is awarded. The Grant Agreement shall specify the parties to the grant, the Grant Performance Period, the amount of the grant, that unspent grant funds shall be returned to the State as required by the Illinois Grant Funds Recovery Act [30 ILCS 705] and other applicable federal and State law, that the State of Illinois may audit records required to be maintained to verify that grant funds were used for permissible uses under the grant, that the grant agreement shall cease if funds for the grant are not appropriated by the General Assembly, and any other standard provisions required to be included in grant agreements entered into by the State.

b) IEMA-OHS will send the Grant Agreement for signature to the point of contact indicated in the application. The Grant Agreement must be signed by both the Grantee and IEMA-OHS prior to funding being disbursed.

c) Following execution of the Grant Agreement, a Grantee shall submit a copy of documents that verify expenditures or anticipated expenditures to IEMA-OHS for review in accordance with the approved Project budget.

d) For all eligible expenditures, IEMA-OHS will pay grantees by the Advance Payment Method, Reimbursement Method, or Working Capital Advance Method, but only upon the Grantee's submission of an accepted bid, invoice, or other official document showing the exact cost of the expenditure. For the Reimbursement Method, the Grantee shall provide documentation (i.e., receipt) that the exact cost of the expenditure was paid to the vendor. Grantees shall submit all bids, invoices, or other official documents showing the exact cost of an expenditure in the format and method prescribed in the Grant Agreement or as otherwise directed by IEMA-OHS. Invoices must include only allowable incurred costs that have been paid by the Grantee.

AGENCY NOTE: Nothing in these rules shall exempt a Grantee from complying with applicable procurement requirements.

1) Advance Payment Method. For the Advance Payment Method, the Grantee shall submit a request as indicated in the NOFO and include the information in subsection (d)(1)(A). Approval and administration of advance payments shall be governed by subsections (d)(1)(B) through (G).

A) An Advance Payment Request Cash Budget Template (Cash Budget). Cash Budgets must be signed by either the Chief Executive Officer (or equivalent) or Chief Financial Officer (or equivalent) for the Grantee. The executive's signature certifies that their entity complies with the requirements set forth in 2 CFR 200.302 (Financial Management) and 44 Ill. Admin. Code 7000.120(b)(i)(A) (Advance Payments). The Cash Budget must demonstrate the estimated monthly cash requirements for each month of the Grant Performance Period.

B) If advance payment is requested, prior to approval, IEMA-OHS will perform or secure an assessment to ensure compliance with the specific language of GATA and any rules adopted pursuant to GATA. If the assessment does not ensure compliance with GATA and the rules promulgated thereunder, then IEMA-OHS may deny the request for advance payment. Any Grantee that has a high risk category as a result of the internal control questionnaire required by GATA shall not be approved for advance payment.

C) Upon approval by IEMA-OHS, advance payments shall be limited to the minimum amounts needed and be timed to be in accordance with

the actual, immediate cash requirements of the Grantee in carrying out the purpose of the approved Project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Grantee for Project costs. Additionally, the Grantee must make timely payments to contractors.

D) Upon approval for advance payment, an initial payment will be processed in an amount equal to the first three months' cash requirements as reflected in the submitted Advance Payment Cash Budget.

E) Subsequent advance payments will be made quarterly based on the invoices submitted to IEMA-OHS and will be adjusted up or down, based on a comparison of actual cumulative expenditures to cumulative advance payments, to date.

F) Grantees that do not expend all advance payment amounts by the end of the Grant Performance Period or that are unable to demonstrate that all incurred costs were necessary, reasonable, allowable, or allocable as approved in their respective grant budget, shall return the funds within 45 days or be subject to grant funds recovery.

2) Reimbursement Method. Grantees will be paid via the reimbursement method when they do not meet the requirements of subsection (d)(1), upon a Grantee's request to use the reimbursement method of payment, or as stipulated in a specific condition. Grantees that have specific conditions noted in their Grant Agreement for any of the following items shall be paid using the Reimbursement Method:

A) Fiscal and administrative high risk (weak internal controls);

B) Have a history of failure to comply with general or specific terms and conditions of the Grant Agreement or any other grants issued by the State of Illinois;

C) Failure to meet expected performance goals as described in 2 CFR 200.211 or their Project deliverables as stated in their applicable Grant Agreement; or

D) Otherwise not financially or programmatically responsible.

3) Working Capital Advance Method. If the Grantee cannot meet the requirements of the Advance Payment Method provided in subsection (d)(1) and IEMA-OHS has determined that reimbursement is not feasible because the Grantee lacks sufficient working capital, IEMA-OHS may provide funding on a

working capital advance basis. Under the Working Capital Advance Method, IEMA-OHS shall advance payments to the Grantee to cover its estimated disbursement needs for initial start-up costs and up to two months of program expenses, not to exceed 25% of the total award amount. The Grantee during the application process shall demonstrate a need for the advance funds to commence a project. The remaining grant funds shall be paid through the Reimbursement Method after the Grantee presents sufficient supporting documentation of expenditures for eligible activities. The Working Capital Advance Method shall not be used if the reason for the working capital advance is the unwillingness or inability of IEMA-OHS to provide timely advance payments to the Grantee to meet the Grantee's actual cash disbursements.