

Bipartisan Budget Act of 2018: Oversight Challenges Facing the Economic Development Administration

FINAL REPORT NO. OIG-18-022

June 4, 2018



U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation



June 4, 2018

MEMORANDUM FOR: Dennis Alvord
Deputy Assistant Secretary for Regional Affairs
Economic Development Administration

A handwritten signature in black ink, appearing to be "R. Bachman", with a long horizontal line extending to the right.

FROM: Richard L. Bachman
Assistant Inspector General for Audit and Evaluation

SUBJECT: *Bipartisan Budget Act of 2018: Oversight Challenges Facing
the Economic Development Administration*
Final Report No. OIG-18-022

On February 9, 2018, the President signed into law the Bipartisan Budget Act of 2018, Public Law No. 115-123 (the Act), which designated \$600 million in disaster relief funds to EDA. The Act requires that recipients use disaster relief funds for necessary expenses related to flood mitigation, disaster relief, long-term recovery, and restoration of infrastructure in areas that received a major disaster designation in 2017. The Act also provides that EDA may transfer up to 2 percent of the appropriated \$600 million, or up to \$12 million, to its “Salaries and Expenses” account for administration and oversight activities and requires EDA to transfer \$1 million of the appropriated \$600 million to OIG to carry out audits and investigations related to the funding provided in the Act.

The attached report represents the first product in OIG’s review of EDA’s implementation of the Act. The purpose of this report is to highlight key EDA oversight challenges and best practices—based on prior OIG reports and other agencies’ relevant work—and identify actions EDA should take now in support of the Act’s requirements.

We recognize EDA has efforts that are currently underway to successfully implement the Act’s requirements. To assist in these efforts, our report identifies five challenges where EDA should exhibit sustained and effective actions and oversight. To that end, our future audit work will use a risk-based strategy to evaluate EDA’s oversight of the funds appropriated under this Act.

If you have any further questions regarding this report, please contact me at (202) 482-2877 or Susan Aggen, Director, Atlanta Regional Office, at (404) 730-2063.

Attachment

cc: Deborah Haynes, Audit Liaison, EDA

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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

Introduction

On February 9, 2018, the President signed into law the Bipartisan Budget Act of 2018, Public Law No. 115-123 (the Act), which designated \$600 million in disaster relief funds to the Economic Development Agency (EDA). This report represents the first product in the Office of Inspector General's (OIG's) review of EDA's implementation of the Act. The purpose of this report is to highlight key EDA oversight challenges and best practices—based on prior OIG reports and other agencies' relevant work—and identify actions EDA should take now in support of the Act's requirements.

According to the National Oceanic and Atmospheric Administration (NOAA), the United States experienced a historic year of weather-related disasters in 2017. Our nation endured 16 separate billion-dollar disaster events, including severe weather, hurricanes, flooding, and wildfires. More notable than the high frequency of events was the cumulative economic costs, which exceed \$300 billion, a new annual U.S. record.¹ For example, in August 2017, Hurricane Harvey dropped over 50 inches of rain, causing catastrophic and unprecedented flooding across southeast Texas and into Louisiana. In the weeks that followed, Hurricanes Irma and Maria brought winds and storm surge, causing catastrophic damage across the U.S. Virgin Islands, Puerto Rico, and the southeast United States. Additionally, there were over 71,000 wildfires reported nationally with more than 10 million acres burned, which was 150 percent above the 10-year average.² More than 12,000 structures were destroyed by wildfires in 2017, ranking it the worst year in total structure losses, based on data from 1999 to the present.³ As a result, 137 major disaster declarations were made throughout the United States in 2017. The Act requires that recipients use disaster relief funds for necessary expenses related to flood mitigation, disaster relief, long-term recovery, and restoration of infrastructure in areas that received a major disaster designation in 2017.

EDA is responsible for providing direct financial assistance to impacted communities through grants and revolving fund loans. The agency serves as the lead coordinator for economic recovery within the National Disaster Recovery Framework (NDRF).⁴ As the lead agency, EDA is responsible for integrating the expertise of the federal government to assist local, state, and tribal governments and the private sector in economic recovery efforts following a major disaster.⁵

The Act provides that EDA may transfer up to 2 percent of the appropriated \$600 million, or up to \$12 million, to its "Salaries and Expenses" account for administration and oversight activities and also requires EDA to transfer \$1 million of the appropriated \$600 million to the Department of

¹ NOAA National Centers for Environmental Information. *Billion-Dollar Weather and Climate Disasters: Overview* [online]. www.ncdc.noaa.gov/billions/ (accessed May 18, 2018).

² National Interagency Coordination Center. *Wildland Fire Summary and Statistics Annual Report 2017* (page 8) [online]. www.predictiveservices.nifc.gov/intelligence/2017_statsum/annual_2017.pdf (accessed May 18, 2018).

³ *Ibid.*

⁴ NDRF is the framework to ensure coordination of recovery planning and execution at all levels of government to best meet the needs of state, local, and tribal entities in their recoveries. NDRF identifies six recovery support functions outlined along major recovery themes, each led by a primary coordinating federal agency.

⁵ International Economic Development Council, March 2015. *Leadership in Times of Crisis: A Toolkit for Economic Recovery and Resiliency*. Washington, DC: IEDC, 30.

Commerce (the Department) OIG to carry out audits and investigations related to the funding provided in the Act. Appendix A presents our scope and methodology. Appendix B provides a list of relevant reports and testimonies used in generating this report.

Oversight Challenges Facing EDA

Historically, providing assistance in a post-disaster recovery environment can present various management challenges. Such challenges include awarding funds to recipients that might not be familiar with federal requirements or that do not have prior experience administering federal funds. The significant increase in funding that EDA is responsible for under the Act and the need to ensure that these funds are distributed in a prompt, fair manner and for authorized purposes will place increased demands on EDA's workforce, oversight processes, business practices, and financial management systems. Accordingly, to meet these demands and provide effective oversight, EDA will need to

- follow a comprehensive oversight implementation strategy;
- acquire sufficient staff with the appropriate proficiency to perform duties pertaining to disaster relief financial assistance;
- develop a risk management strategy to strengthen internal control;
- mitigate fraud, waste, and abuse; and
- identify unused funds for use on other eligible projects.

I. Follow a Comprehensive Oversight Implementation Strategy

Because EDA plans to issue implementation guidance and begin the process for awarding grants by the end of fiscal year (FY) 2018, it will need to accomplish a variety of tasks within a short period. The scope and magnitude of the Act's funds may require EDA to modify existing processes and implement new processes for successful grants administration. The timeline required to set up programs and spending processes, while maintaining compliance with federal rules, could take many months. Therefore, to ensure the safeguarding of federal assets and to maintain effective and efficient operations, it is essential that EDA use sound management practices and ensure the effectiveness of its own operations as it carries out its disaster recovery mission.

With 903 of 3,223 U.S. counties declared disaster areas in 2017 (around 28 percent), it is important that EDA plans how it will determine and document the decision-making process in a transparent manner for deciding which geographic areas affected by disasters are highest priority, as well as the methodology used to allocate funding to the EDA regional offices. The prioritization of recovery needs should form the basis for a comprehensive road map of programs and an integrated budget for funding those needs.

Additionally, because of the scale of recovery efforts, successes and failures are highly visible to many groups. Accordingly, EDA should establish a proactive communications strategy to engage parties such as Congress and the public on the complexities of recovery. This could make a significant difference in achieving stakeholder support even when the recovery effort runs into problems. Without proactive engagement, EDA may experience media and public backlash that could force it to make counterproductive decisions about the recovery.

II. Acquire Sufficient Staff with the Appropriate Proficiency

Human capital challenges at all levels are responsible for many of the operational difficulties faced during disaster recovery efforts. With the significant increase in spending and related activities comes a corresponding increase in the number of staff that EDA may need to work effectively. Consequently, strategic workforce planning is essential for ensuring that EDA has sufficient staff with adequate talent, skill, and experience mix needed for cost-effective execution of its mission and program goals. Shortages of staff with the right skills and abilities can contribute to delays in disaster recovery. In response to the Act, EDA will need to quickly organize existing staff and hire additional temporary staff to meet the Act's objective. As previously mentioned, the Act allows up to \$12 million for administration and oversight costs.

According to the U.S. Office of Personnel Management (OPM)⁶, "workforce planning serves as the foundation for managing an organization's human capital." Workforce planning assists organizations to (1) fill positions with the right employees who have the necessary competencies, and (2) meet future organizational goals and objectives. OPM lists three key components to an effective workforce plan:

- aligning current and future needs to the recovery program requirements;
- determining the number, skills, and proficiency levels required; and
- actions that must be taken to attract, develop and retain employees.

Since 2011, we have reported that the Department continues to face challenges regarding its workforce. For example, in our recent top management challenges report, we disclosed that the Department continues to face workforce challenges such as its inability to (1) attract and retain experienced professionals to work in locations outside the Washington, DC, metropolitan area and (2) fill vacant positions timely.⁷ EDA needs to ensure it has the ability to provide sufficient oversight with limited time and staff, especially in the regional offices that oversee the largest disaster areas. This is especially critical since the Act's disaster recovery funding tripled EDA's typical FY funding.

⁶ Office of Personnel Management, October 7, 2011. *Migration Planning Guidance Information Documents, Workforce Planning Best Practices*. Washington, DC: OPM.

⁷ U.S. Department of Commerce Office of Inspector General, September 29, 2017. *Top Management and Performance Challenges Facing the Department of Commerce*. OIG-17-033. Washington, DC: DOC OIG.

III. Develop a Risk Management Strategy to Strengthen Internal Control

All federal agencies, including EDA, are responsible for implementing management practices, through the establishment of internal control, that identify, assess, respond, and report on risks.⁸ Agencies use a risk-based approach to design and implement financial and administrative controls to identify and mitigate these events in order to provide reasonable assurance that EDA's controls over operations and compliance are operating effectively.

In assessing risks in disaster situations, EDA should leverage its existing enterprise risk management processes where possible. However, the agency should ensure that it has a sufficient process to identify and mitigate any new risks or changes to existing risks. This is particularly important for EDA, which must rely on its existing control structure to manage risk over the disaster relief funding that triples its current grant portfolio. By continually identifying and assessing risk, EDA will be better able to develop an effective risk management strategy to further strengthen its internal controls.

When developing its strategy, a helpful start for EDA is to consider the best practices of other organizations. For example, the U.S. Department of Housing and Urban Development (HUD) OIG performed an evaluation of the risk management process for Hurricane Sandy grants at HUD's Office of Community Planning and Development (CPD).⁹ In May 2010, OIG performed an audit of the National Institute of Standards and Technology's (NIST's) and NOAA's implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) performance measurement requirements.¹⁰ We reported that both NOAA and NIST had established mechanisms to actively manage risks associated with the Recovery Act, which resulted in improved management capabilities and systems (see table I, next page).

⁸ Office of Management and Budget, July 15, 2016. *Memorandum to the Heads of Executive Departments and Agencies, OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control*. Washington, DC: OMB.

⁹ U.S. Department of Housing and Urban Development OIG. March 29, 2017. *Opportunities for Improvement within CPD's Risk Management Process for Hurricane Sandy Grants*. 2016-OE-0004S. Washington, DC: HUD OIG.

¹⁰ DOC OIG. May 21, 2010. *NIST and NOAA Monitor Their Recovery Act Programs, but Performance Metrics Need to Measure Outcomes*. ARR-19881. Washington, DC: DOC OIG.

Table I. Additional Risk Management Steps taken by NIST/NOAA^a

Recovery Act Program	Additional Controls	Program Activity Milestones	Program Activity Actions	Risk Assessment Results
NIST Scientific and Technical Research Services (STRS) program: \$220 million plus \$30 million in transfers	<ul style="list-style-type: none"> • Recovery Act Steering Committee • Program Management Office • Database for tracking obligations and program progress 	Monthly action plans address funds' obligation status, milestones, risk identification, and risk assessment	Steering committee meets as needed to identify, prioritize, and mitigate emerging risks, focusing on obligation	<ul style="list-style-type: none"> • Contractor develops and implements risk management system • All Recovery Act projects are assessed for risk (low/medium/high)
NOAA Procurement, Acquisition, and Construction (PAC) program: \$600 million	<ul style="list-style-type: none"> • Accountability Oversight Board • Web-based executive dashboard • Tracking of selected higher risk programs 	Program managers present status updates on budget, risk management, project progress, and performance measurement to Oversight Board	<ul style="list-style-type: none"> • Oversight Board meets weekly to review projects and intervenes as necessary • Action items follow each meeting • Recovery Act program manager monitors follow-up 	<ul style="list-style-type: none"> • Board has elevated higher risk projects to heightened scrutiny • Board has actively coordinated with external stakeholders and mitigated cascading effects of early delay

Source: DOC OIG Final Report No. ARR-19881, *NIST and NOAA Monitor Their Recovery Act Programs, but Performance Metrics Need to Measure Outcomes*, May 21, 2010.

^a Program activity milestones, actions, and risk assessment results were OMB and Recovery Act requirements.

EDA will need to execute a risk-based framework in its oversight plan and institute additional measures, if necessary, to mitigate known risks and ensure that disaster recovery funds are properly distributed and spent.

IV. Mitigate Fraud, Waste, and Abuse

When providing disaster relief, fraud risks are higher than under normal circumstances.

“[T]he 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.”¹¹

EDA should tailor its efforts to combat fraud to adapt to the increased funding associated with disaster relief. EDA should target its outreach efforts at deterring fraud schemes that could occur on projects that receive funding for economic recovery. Schemes can include

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,
- product substitution, and
- time and materials overcharging.

For example, our investigations continue to uncover fraud and misconduct related to Departmental contracts and grants. These cases have disclosed such acts as the diversion of grant funds to purchase a property to use as a personal residence for the grant recipient and to make luxurious renovations to that property¹² and false billing leading to over \$1 million in fraudulent personal gain by a president of a contracting company.¹³ Departmental contract and grants personnel are the Department’s first line of defense, and their increased vigilance can prevent or reduce losses in the first place.

Additionally, EDA will need to make sure that the state and local grantees, and their contractors, understand how to detect, deter, and report suspicious activities or fraud to the appropriate authorities. An important way to deter fraud is for EDA staff to be aware of certain “red flag” indicators typically associated with fraud schemes. For example, any mismarking or mislabeling on products and materials might indicate product substitution fraud. The best way to make individuals aware of these indicators is to conduct systematic fraud prevention education in the field.

¹¹ OMB, March 30, 2018. *Memorandum for the Heads of Executive Departments and Agencies: Implementation of Internal Controls and Grant Expenditures for the Disaster-Related Appropriations*, Washington, DC: OMB.

¹² Department of Justice, "Former 'Living the Dream' Executive Director Sentenced in Fraud Scheme," news release, October 28, 2016, [online]. <https://www.justice.gov/usao-mdtn/pr/former-living-dream-executive-director-sentenced-fraud-scheme> (accessed on May 18, 2018).

¹³ DOJ, "Business Owner Sentenced to 20 Months in Prison for Fraudulent Billing Scheme Against Federal Government," news release, October 20, 2017, [online]. <https://www.justice.gov/usao-dc/pr/business-owner-sentenced-20-months-prison-fraudulent-billing-scheme-against-federal> (accessed on May 18, 2018).

V. Identify Unused Funds for Use on Other Eligible Projects

Per OMB guidance, grant funds must be used by the grantee within the 2-year period following EDA's obligation of those funds. Otherwise, the grantee is required to return any unused funds, unless OMB grants a waiver.¹⁴ To ensure compliance and to maximize the impact of the disaster recovery funds, EDA should improve its controls for identifying unused funds in its financial management systems and taking appropriate action to release them on completed, cancelled, and reduced-scope projects. In particular, EDA needs to ensure that it addressed the control weaknesses that we identified in prior audits regarding unliquidated obligations.

For example, in April 2017, we reported that EDA did not develop and implement written bureau-specific procedures to execute the Department-wide policy as required for unliquidated obligations. As a result, EDA could not provide acceptable explanations that outstanding balances were needed in 11 percent of the sampled obligations tested.¹⁵ Without sufficient controls, it is possible for unused funds to remain idle for long periods of time. This could prevent other qualified disaster relief projects from receiving federal funds and potentially hinder EDA's ability to improve an impacted locality's economic climate. Although EDA has stated that it has taken action to address the findings in the April 2017 report, the magnitude and the accelerated pace for spending disaster recovery dollars could exacerbate problems we previously identified.

¹⁴ OMB, March 30, 2018. *Memorandum for the Heads of Executive Departments and Agencies: Implementation of Internal Controls and Grant Expenditures for the Disaster-Related Appropriations*. Washington, DC: OMB.

¹⁵ DOC OIG, April 27, 2017. *EDA Can Strengthen Its Policies and Procedures for Monitoring ULOs*. OIG-17-023-A. Washington, DC: DOC OIG.

Conclusion

The significant increase in funding for disaster relief projects associated with the Act adds new challenges. Faced with such challenges, EDA needs to look beyond its usual way of doing business and adjust its usual practices to help ensure the accountability and transparency of disaster recovery funds.

We recognize EDA has efforts that are currently underway to successfully implement the Act's requirements. To assist in these efforts, our report identified five challenges where EDA should exhibit sustained and effective actions and oversight. To that end, our future audit work will use a risk-based strategy to evaluate EDA's oversight of the funds appropriated under this Act. To ensure sufficient consideration of the potential risks discussed in this report, we suggest that the EDA develop an oversight implementation plan that outlines the key actions EDA already has underway or will take to

- prepare for managing the significant increase of funding and providing reasonable assurance that (a) funds are spent properly and (b) the risk of ineligible and excessive costs borne by taxpayers is mitigated;
- acquire sufficient personnel with relevant expertise to oversee grantees;
- refine risk assessment and mitigation plans to take into account the significant increase in funding;
- identify unused funds promptly for use on other eligible projects;
- take a proactive awareness stance related to the potential for fraud;
- assess outreach program and technical assistance activities in response to the substantial increase in funding for ensuring program integrity and effectiveness;
- enhance accountability and transparency, so that the public can be assured that funds are spent in accordance with federal requirements; and
- establish clear communication with the public to convey expectations and facilitate messages to the public, the media, and other interested parties.

Appendix A: Purpose, Scope and Methodology

The purpose of this report is to highlight key EDA oversight challenges—based on prior OIG reports and other agencies’ relevant work—and identify actions EDA should consider in support of the Act’s implementation.

To accomplish this, we conducted a comprehensive review of our prior work on relevant grant oversight projects and the relevant work of other organizations that have reported on similar oversight issues, including the Government Accountability Office (GAO). Specifically, we:

- reviewed the existing body of OIG, GAO, and others’ work to identify past challenges that are likely to apply to projects funded under this Act;
- held discussion with EDA Atlanta Regional Office staff members to identify what they believe are the oversight challenges and to obtain information on the implementation of this Act’s requirements; and
- reviewed relevant guidance affecting disaster relief for FY 2017, as listed below:
 - Bipartisan Budget Act of 2018, Public Law No. 115-123
 - Department of Commerce *Accounting Principles and Standards Handbook* (Revised June 2016)
 - Department of Commerce *Grants and Cooperative Agreements Manual* (dated October 2016)
 - Department of Commerce *Policy for Monitoring of Undelivered Orders* (June 22, 2015)
 - EDA *Final Grant Procedures and Best Practices Manual* (September 2, 2014)
 - EDA *Policy and Operations Manual* (October 2013)
 - OMB’s Memorandum to the Heads of Executive Departments and Agencies, Circular No. A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control* (dated July 15, 2016)
 - OMB’s Memorandum to the Heads of Executive Departments and Agencies, M-18-14, *Implementation of Internal Controls and Grant Expenditures for the Disaster Related Appropriations* (dated March 30, 2018)
 - OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 Code of Federal Regulations (CFR) Part 200 (2014)
 - Public Works and Economic Development Act of 1965, Public Law No. 89-136, as amended, including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004, Public Law No. 108-373
 - Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law No. 100-707, as amended
 - 13 CFR Chapter III, *Economic Development Administration, Department of Commerce*

Appendix B: Relevant OIG and GAO Reports and Testimonies

- DOC OIG Final Report No. OIG-17-023-A, *EDA Can Strengthen Its Policies and Procedures for Monitoring ULOs*, April 27, 2017
- DOC OIG Final Report No. ARR-19881, *NIST and NOAA Monitor Their Recovery Act Programs, but Performance Metrics Need to Measure Outcomes*, May 21, 2010
- DHS OIG Report No. OIG-17-120-D, *Audit Tips for Managing Disaster-Related Project Costs*, September 29, 2017
- GAO Testimony Before the Committee on Oversight and Government Reform, House of Representatives, GAO-09-419T, *Excluded Parties List System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, February 26, 2009
- HUD OIG Report No. 2016-OE-0004S, *Opportunities for Improvement within CPD's Risk Management Process for Hurricane Sandy Grants*, March 29, 2017
- U.S. Department of Homeland Security (DHS) OIG Report No. OIG-18-06, *Summary and Key Findings of Fiscal Year 2016 FEMA Disaster Grant and Program Audits*, October 27, 2017
- U.S. Department of Transportation OIG Report No. ZA-2010-034, *DOT's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties*, January 7, 2010
- Written Statement of the Honorable Todd J. Zinser, Inspector General, U.S. Department of Commerce, Hearing on Recovery Act Oversight, Before the Subcommittee on Investigations and Oversight, Committee on Science and Technology, U.S. House of Representatives, March 19, 2009

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