

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**THE NATIONAL INSTITUTES OF HEALTH  
ADMINISTERED SUPERFUND  
APPROPRIATIONS DURING FISCAL YEAR  
2018 IN ACCORDANCE WITH FEDERAL  
REQUIREMENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Amy J. Frontz  
Deputy Inspector General  
for Audit Services**

**April 2020  
A-04-19-04072**

# *Office of Inspector General*

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## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## Report in Brief

Date: April 2020

Report No. A-04-19-04072

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Audit

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) established the trust fund known as Superfund. The CERCLA requires the Inspector General of a Federal organization with Superfund responsibilities to audit all uses of the fund in the prior fiscal year (FY).

To meet this requirement, OIG conducts an annual audit of the Superfund program at the National Institutes of Health (NIH), National Institute of Environmental Health Sciences (the Institute), to determine whether NIH administered Superfund appropriations in accordance with applicable Federal requirements.

### How OIG Did This Audit

Our audit covered \$77 million of obligations and \$77 million of disbursements related to the FYs 2013 through 2018 Superfund appropriations that occurred from October 2017 through September 2018 (audit period). We also (1) analyzed cumulative obligations, totaling \$461 million and cumulative disbursements totaling \$370 million and (2) assessed NIH's efforts to ensure grantee compliance with financial, performance, and audit reporting requirements.

## The National Institutes of Health Administered Superfund Appropriations During Fiscal Year 2018 in Accordance With Federal Requirements

### What OIG Found

During FY 2018, NIH administered Superfund appropriations in accordance with applicable Federal requirements. Specifically, NIH obligated and disbursed Superfund appropriations in accordance with Federal requirements and in similar proportions to prior years. In addition, the Institute's monitoring of Superfund grants generally ensured that grantees met requirements for financial, performance, and audit reporting.

### What OIG Recommends

This report contains no recommendations.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.) established the Hazardous Substance Response Trust Fund, commonly known as the Superfund. The National Institute of Environmental Health Sciences (the Institute) of the National Institutes of Health (NIH) receives an annual Superfund appropriation to carry out functions mandated by the CERCLA.<sup>1</sup>

The CERCLA requires the Inspector General of a Federal organization with Superfund responsibilities to audit all uses of the fund in the prior fiscal year (FY) (42 U.S.C. § 9611(k)). To meet this requirement, the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), conducts an annual audit of NIH's use of its Superfund appropriations. (See Appendix B for a list of related OIG reports.)

### OBJECTIVE

Our objective was to determine whether NIH<sup>2</sup> administered Superfund appropriations during FY 2018 in accordance with applicable Federal requirements. Specifically, we determined whether NIH properly obligated and disbursed Superfund appropriations and provided adequate oversight of grant awards and related transactions.

### BACKGROUND

#### Superfund

The Superfund Amendments and Reauthorization Act of 1986 extended and amended the CERCLA. The Superfund is used to respond to emergency environmental conditions that are hazardous to health and to pay for the removal of toxic substances.

The Institute receives funding to carry out functions mandated by the CERCLA. In carrying out its Superfund responsibilities for FY 2018, the Institute obligated approximately 5 percent of these funds for administrative costs and used the remaining 95 percent to award grants and cooperative agreements (grants) to other organizations to:

- train persons who are engaged in handling hazardous waste and managing facilities where hazardous waste is located and

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<sup>1</sup> In FY 2018, NIH received \$77.3 million to carry out these functions through the Consolidated Appropriations Act, 2018 (P.L. No. 115-141).

<sup>2</sup> NIH includes the Institute.

- conduct research—using advanced techniques, methods, and technologies—to detect, assess, and evaluate the effects of hazardous substances on human health and to reduce the amount and toxicity of those substances.

## **National Institute of Environmental Health Sciences**

The Institute, located in Research Triangle Park, North Carolina, is 1 of 27 Institutes and Centers of NIH, which is a component of HHS. NIH provides the Institute with direction and other administrative and professional services.

### **HOW WE CONDUCTED THIS AUDIT**

Our audit covered all obligations and disbursements related to FYs 2013 through 2018 Superfund appropriations that occurred from October 1, 2017, through September 30, 2018 (audit period).<sup>3</sup> During the audit period, NIH obligated<sup>4</sup> approximately \$77 million and disbursed approximately \$77 million in Superfund resources. Of the \$77 million in disbursements, \$3 million came from the FY 2018 appropriation, and \$74 million came from prior years. Of the \$77 million disbursed for the Superfund program in FY 2018, \$73 million was for grant expenditures, and the remaining \$4 million was for expenditures to administer the program (administrative expenditures). We performed analytical tests of transactions to determine whether there were significant variances between FY 2018 and FY 2017 administrative expenditures that would warrant further testing.<sup>5</sup>

We also analyzed cumulative obligations totaling \$461 million and cumulative disbursements totaling \$370 million associated with FY 2013 through FY 2018 appropriations to determine whether there were unusual balances of prior-year Superfund appropriations, including large balances of unliquidated obligations, new obligations of expired appropriations, or unusual disbursement activities.

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<sup>3</sup> Annual appropriations expire at the end of the FY but remain available for 5 years for recording, adjusting, and liquidating obligations that were properly incurred during the time the appropriation was available for obligation (31 U.S.C. §§ 1553(a) and 1552(a)). Therefore, our scope included obligations and disbursements of FYs 2013 through 2017 appropriations, as well as those of FY 2018.

<sup>4</sup> “Obligated” funds are amounts for which the Federal agency has made binding commitments for orders placed for property and services, contracts and subawards, and similar transactions that will require payment immediately or in the future (GAO-05-734SP Budget Glossary, p. 70).

<sup>5</sup> There were no significant variances; therefore, we did not perform additional testing.

As part of our review of NIH's monitoring of Superfund grants<sup>6</sup> and to verify that all uses of Superfund appropriations received audit coverage, we reviewed whether (1) single audit<sup>7</sup> or non-Federal audit<sup>8</sup> requirements applied to each grantee, (2) applicable grantees complied with audit requirements, (3) some audit findings related to Superfund awards, and (4) NIH resolved those findings.

We reviewed whether (1) applicable grantees complied with grant terms and conditions<sup>9</sup> and (2) NIH adequately monitored the selected grants or took enforcement action to ensure compliance, if applicable.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our scope and methodology.

## RESULTS OF AUDIT

During FY 2018, NIH administered Superfund appropriations in accordance with applicable Federal requirements. Specifically, NIH obligated and disbursed Superfund appropriations in accordance with Federal laws and in similar proportions to prior years. In addition, the

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<sup>6</sup> For grant awards made prior to December 26, 2014, 45 CFR part 74 establishes uniform administrative and audit requirements governing HHS grants and agreements awarded to nonprofit entities. For grant awards made on or after December 26, 2014, 45 CFR part 75 establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. The scope of our review covered grants and agreements made before and after December 26, 2014. Therefore, we cite to both regulations as applicable.

<sup>7</sup> "Single audit" refers to an audit performed in compliance with 45 CFR § 74.26(a) and the Office of Management and Budget (OMB) Circular A-133 (generally applicable to audits of FYs that began on or before December 26, 2014, of not-for-profit entities that expended more than \$500,000 in Federal awards prior to December 26, 2014) or with 45 CFR § 75.110(b) and 45 CFR § 75.501 (generally applicable to audits of FYs beginning on or after December 26, 2014, of not-for-profit entities that expend \$750,000 or more).

<sup>8</sup> "Non-Federal audit" refers to an audit performed in compliance with 45 CFR § 74.26(d) (applicable to commercial non-Federal entities that received and subsequently expended more than \$500,000 in Federal awards during FYs that began on or before December 26, 2014) or 45 CFR § 75.501 (generally applicable to non-Federal entities that expend \$750,000 or more during their FYs beginning on or after December 26, 2014).

<sup>9</sup> Terms and conditions included requirements to submit various reports including financial reports, progress reports, and other reports used for grant monitoring.



Institute's monitoring of Superfund grants generally ensured that grantees met requirements for financial, performance, and audit reporting.

## **NIH OBLIGATIONS AND DISBURSEMENTS OF SUPERFUND APPROPRIATIONS MET FEDERAL REQUIREMENTS**

NIH obligated and disbursed Superfund appropriations in accordance with Federal requirements and incurred costs for administering the Superfund program at levels that were in similar proportions to prior years. NIH received \$77.3 million under the FY 2018 Superfund appropriation, of which it obligated 95 percent of the FY 2018 appropriation for grants and the remaining 5 percent for administrative expenditures.<sup>10</sup> Obligations and disbursements for administrative expenditures were within 1 percent of FY 2017 levels, respectively. There were also no unusual balances of prior-year appropriations, such as large balances of unliquidated obligations or new obligations of expired appropriations.

## **THE INSTITUTE GENERALLY ENSURED THAT SUPERFUND GRANTEES MET REPORTING REQUIREMENTS**

In general, the Institute ensured that Superfund grantees met key reporting requirements including the filing of required performance reports,<sup>11</sup> financial reports,<sup>12</sup> and audit reports.<sup>13</sup> For the 46 grants that had a performance report due, a financial report due, or both due during our audit period, grantees were, on average, approximately 10 days late in the filing of financial reports and 20 days late in the filing of performance reports.

As in prior years, we noted that most grantees filed required reports on time, or close to the due date, and a relatively few late reports caused the average report lateness (see table 1 on the next page).<sup>14</sup> Also, the Institute had consistently contacted grantees for required reports (in all but one case), and it ultimately received the required reports (in all but one case). Furthermore, the Institute has a new Chief Grants Management Officer that is currently in the process of developing new standard operating procedures for grants monitoring at the Institute.

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<sup>10</sup> These funding levels were the same for FY 2017.

<sup>11</sup> Research Performance and Progress Reports.

<sup>12</sup> Federal Financial Reports.

<sup>13</sup> Non-Federal audit reports.

<sup>14</sup> Four late financial reports accounted for over 80 percent of the financial report average lateness, and three late performance reports accounted for over 90 percent of the performance report average lateness.

**Table 1: Number of Days Late That Superfund Grantees Filed Performance and Financial Reports**

	<b>On Time</b>	<b>1-30</b>	<b>31-90</b>	<b>91-120</b>	<b>Over 120</b>	<b>Not Submitted</b>	<b>Total</b>
<b>Performance Reports</b>	34	7	1	1	2	1	<b>46</b>
<b>Financial Reports</b>	27	5	4	2	2	1	<b>41</b>

Of the 85 Superfund grantees we reviewed for compliance with non-Federal audit requirements, all 85 had submitted audits when required. Within these audits, we identified no unresolved, adverse audit findings that we considered to be high risk such as findings that directly related to the Superfund program grants, findings with high monetary values, or findings that independent auditors found to be material weaknesses in the internal control of the grantee organizations.

#### **NIH AND THE INSTITUTE TOOK ACTIONS AGAINST TWO SUPERFUND GRANTEES**

NIH and the Institute took actions against two Superfund program grantees related to matters that we brought to their attention during the course of our audit. NIH referred one grantee to our Office of Investigations for potential investigation, and the Institute used its authority to unilaterally close out a grant because a grantee did not submit grant closeout reports.

For one grantee, we identified potential grant fraud indicators in both pre-award and post-award activities.<sup>15</sup> The grantee, a small for-profit business, had received a phase II Small Business Innovation Research (SBIR) grant from the Institute during the audit period. The SBIR program usually requires that principal investigators (PIs) be primarily employed by the small business receiving the SBIR award.<sup>16</sup> NIH requires grantees to certify that the PI will spend more than half of his/her time as an employee of the small business during the grant period. The grantee had submitted such a certification in this case. However, the grant application and other information, including public internet sites, showed that the PI for the grant was an associate professor at a university. Another potential fraud indicator was that an individual with a significant role in the proposed project appeared to have been a full-time student at the university. Furthermore, a LinkedIn profile for that individual showed that he had interned at other companies during the grant’s period of performance and did not reflect employment history with the SBIR grantee. We brought these and other concerns to the

<sup>15</sup> We identified the potential issues by reviewing the grantee’s grant application and related documentation, the grantee’s fund drawdown history in the Payment Management System (PMS), and public websites.

<sup>16</sup> “Primarily employed” is defined in the NIH Grants Policy Statement as being committed to the grantee at a level of effort of at least 51 percent of the PI’s time.

Institute's attention. The Institute relayed our concerns to NIH's Division of Program Integrity (DPI) for further review.<sup>17</sup> DPI subsequently referred the matter to our Office of Investigations. The grantee that had potential grant-fraud indicators appeared to be an isolated case.

For another grantee, the Institute told us that it had unilaterally closed out a grant because the grantee had not filed grant closeout reports including a final performance report and a final financial report.<sup>18</sup> NIH policy requires that grants be closed out within 270 days of the project end date and that unilateral closeout procedures should be used after 180 days. However, the Institute did not unilaterally close out this grant until 544 days after the end of the project. An email showed that the Institute had followed up with the grantee on multiple occasions, but, around the time that unilateral closeout procedures should have been used, the Institute's CGMO position became vacant (May 2018). The Institute filled the CGMO position in May 2019 and unilaterally closed out the grant shortly thereafter.

We found that the grantee had disbursed all of its authorized Superfund grant funds prior to the end of the funded project and that, during the course of the grant, the Institute had determined that the grantee's progress was satisfactory. Aside from the final reports required for closeout,<sup>19</sup> there were no other deliverables required by the grant. We identified no other risks associated with this grant and determined no further review or inquiry was warranted.

The untimely closeout of this grant appeared to be an isolated incident. Also, a centralized group at NIH is responsible for coordinating all NIH grant closeouts and recently updated its grant closeout procedures. We plan to evaluate the effect of these changes during our FY 2019 audit.

## CONCLUSION

Based on our audit results, this report contains no recommendations.

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<sup>17</sup> DPI reviews allegations involving NIH program activities including conducting reviews of allegations of misuse of NIH grant funds and conflicts of interest. If DPI discovers evidence of potential criminal activity, it will refer the matter to our Office of Investigations.

<sup>18</sup> Unilateral closeout means that the government closes out the grant without the cooperation of the grantee. In accordance with NIH policy, Chief Grants Management Officers (CGMOs) are authorized to unilaterally close out a grant if the grantee fails to submit acceptable final reports within 180 days of the end of a project.

<sup>19</sup> The final reports required for closeout include a final performance report, final financial report, and final invention statement. NIH requires that SBIR grantees submit a final invention statement to disclose to NIH whether a grant resulted in any inventions.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

Our audit covered all obligations and disbursements related to FYs 2013 through 2018 Superfund appropriations that occurred from October 1, 2017, through September 30, 2018 (audit period).<sup>20</sup> During the audit period, NIH obligated and disbursed approximately \$77 million in Superfund resources. Of the \$77 million in disbursements, \$3 million came from the FY 2018 appropriation, and \$74 million came from prior years. Our audit also covered NIH's grant oversight functions because approximately 95 percent of NIH's Superfund appropriations are used for grant funding.

### METHODOLOGY

To accomplish our audit objective, we:

- reviewed applicable laws and regulations regarding Superfund appropriations;
- obtained an understanding of NIH's controls over funding authority, financial reporting, and grants;
- reconciled NIH accounting records with a list that the Institute provided of all Superfund financial transactions recorded from October 1, 2017, through September 30, 2018, to determine its accuracy and completeness;
- reviewed the Institute's FY 2018 interagency agreements to determine whether it funded other government agencies using its Superfund appropriations;
- traced approximately \$73 million in obligations to 71 research and training grant award documents to determine whether grant awards were properly recorded;
- analyzed transactions to test whether there were any significant variances in FY 2018 administrative account balances that would warrant further testing;

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<sup>20</sup> Because annual appropriations may be disbursed up to 5 years beyond the appropriation year, our scope included obligations and disbursements of FY 2013 through FY 2017 appropriations, as well as those of FY 2018.

- analyzed cumulative obligations, totaling \$461 million, and cumulative disbursements, totaling \$370 million, associated with FY 2013 through FY 2018 appropriations to determine whether there were unusual balances of Superfund appropriations, including large balances of unliquidated obligations, new obligations of expired appropriations, or unusual disbursement activities;
- compared Notices of Award for each Superfund grant NIH issued during FY 2018 to funding opportunity announcements to assess whether the grants were consistent with Superfund program activities;
- determined whether grantees complied with non-Federal audit requirements, including the submission of audit report information to the Federal Audit Clearinghouse or the National External Audit Review Center;
- determined whether NIH resolved applicable grantee audit findings that were related to Superfund grants;
- reviewed applicable grants to determine whether:
  - grantees complied with grant terms and conditions, including the submission of financial and progress reports to NIH, and
  - NIH adequately monitored the grants or took enforcement action to ensure compliance with grant terms and conditions, if applicable; and
- discussed the results of the audit with Institute officials.

We provided NIH with a draft audit report on February 25, 2020. NIH elected not to provide written comments.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>The National Institutes of Health Administered Superfund Appropriations During Fiscal Year 2017 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-19-04071</u></a>	9/2019
<i>The National Institutes of Health Administered Superfund Appropriations During Fiscal Year 2016 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-18-04065</u></a>	6/2019
<i>The National Institutes of Health Did Not Always Administer Superfund Appropriations During Fiscal Year 2015 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-16-04046</u></a>	2/2018
<i>The National Institute of Environmental Health Sciences Generally Administered Its Superfund Appropriations During Fiscal Year 2014 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-15-04035</u></a>	4/2016
<i>The National Institute of Environmental Health Sciences Administered Its Superfund Appropriations During Fiscal Year 2013 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-14-04024</u></a>	9/2014
<i>The National Institute of Environmental Health Sciences Generally Administered Its Superfund Appropriations During Fiscal Year 2012 in Accordance With Federal Requirements</i>	<a href="#"><u>A-04-13-01025</u></a>	4/2014
<i>Superfund Financial Activities at the National Institute of Environmental Health Sciences—Fiscal Year 2011</i>	<a href="#"><u>A-04-12-01013</u></a>	7/2012