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Waiver of Matching Funds and Consolidation of Grants to Insular Areas under 48 U.S.C. § 1469a

48 U.S.C. § 1469a

- Congressional declaration of policy respecting “Insular Areas” – Title V of Omnibus Territories Act of 1977 (Pub. L. 95-134)
- Purpose: “to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs.”
- Two functions:
 - Instructs agencies on when they can/must waive matching fund requirements for grants to Insular Areas
 - Instructs agencies on consolidation of grants to Insular Areas
- Must be read alongside Pub. L. 96-205, Title VI, § 601!!

Waiver of Matching Fund Requirements

Pub. L. 96-205 “amendment”

§1469a. Congressional declaration of policy respecting “Insular Areas”

In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as “Insular Areas”) it is declared to be the policy of the Congress, notwithstanding any provision of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes

(other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any Insular area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes in the absence of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (1) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (2) a single report to such department or agency with respect to each such consolidated grant: *Provided*, That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, may (1) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (2) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant.

(Pub. L. 95-134, title V, §501, Oct. 15, 1977, 91 Stat. 1164; Pub. L. 95-348, §9, Aug. 18, 1978, 92 Stat. 495.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 96-205, title VI, §601, Mar. 12, 1980, 94 Stat. 90, as amended Pub. L. 98-213, §6, Dec. 8, 1983, 97 Stat. 1460; Pub. L. 98-454, title VI, §601(b), Oct. 5, 1984, 98 Stat. 1736, provided that this section shall be applied with respect to the Department of the Interior by substituting “shall” for “may” in the last sentence of subsection (d), and adding the following sentence at the end of subsection (d): “Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under \$200,000 (including in-kind contributions) required by law to be provided by American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands.”

AMENDMENT OF SUBSECTION (d)

Pub. L. 96-205, title VI, §601, Mar. 12, 1980, 94 Stat. 90, as amended Pub. L. 98-213, §6, Dec. 8, 1983, 97 Stat. 1460; Pub. L. 98-454, title VI, §601(b), Oct. 5, 1984, 98 Stat. 1736, provided that this section shall be applied with respect to the Department of the Interior by substituting “shall” for “may” in the last sentence of subsection (d), and adding the following sentence at the end of subsection (d): “Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under \$200,000 (including in-kind contributions) required by law to be provided by American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands.”

“The administering authority of any department or agency, in its discretion, may ¹ (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved...”

Match waiver rules are different for DOI and other agencies

§ 1469a(d) and Pub. L. 96-205: For grants to the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands:

- Interior: DOI MUST waive ALL matching fund requirements* (no discretion)
- All other agencies:
 - If required match is less than \$200,000, the agency MUST waive requirement for local matching funds* (no discretion)
 - If required match amount is \$200,000 or greater, the agency MAY waive requirement for local matching funds (discretion)

*as long as the grantmaking statute does not override 48 USC § 1469a

DOI's Policy Advisory Notice



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

POLICY ADVISORY NOTICE

Title: Agency Waiver of Matching Fund Requirements for Insular Areas

DOI-PGM-PAN Reference No: 2023-0001

Notification Date: October 12, 2022

Purpose: The purpose of this Policy Advisory Notice is to inform that the Office of the Solicitor, Division of General Law, Branch of General Legal Services has determined that the Department of the Interior bureaus and offices are required to waive matching fund requirements for grants to the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands in accordance with the attached Matching Fund Fact Sheet.

Comptroller Alert CA-23-04



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 6, 2023

CA-23-04, Waiving Matching Fund Requirements for Insular Areas

Controller Alerts are designed to highlight emerging financial management issues that may require agency attention or action. These Alerts are intended to inform the Chief Financial Officer (CFO) community of key issues where the Office of Management and Budget (OMB) believes further action may be warranted, but do not constitute official guidance or prescribe specific tasks for agencies beyond consideration of appropriate steps to address the issue.

The purpose of this Controller Alert is to inform Federal agencies of the following legal requirement regarding waiver of local matching funds requirements for financial assistance to “insular areas.”

Conflict & Case Example

- § 1469a(d) and Pub. L. 96-205 are relatively old (1977 and 1980) → always check grantmaking authority for conflict of waiver provisions!
- BIL Case Example - Ecosystem Restoration
 - Section 40804(b)(4)(B)

Grants.

(4) \$400,000,000 shall be made available to the Secretary of the Interior to provide grants to States, territories of the United States, and Indian Tribes for implementing voluntary ecosystem restoration projects on private or public land, in consultation with the Secretary of Agriculture, that—

(A) ~~prioritizes funding cross-boundary projects; and~~

(B) requires matching funding from the State, territory of the United States, or Indian Tribe to be eligible to receive the funding;

Case Example cont'd

- 48 USC 1804(b) explicitly requires local match from Northern Mariana Islands for direct grant assistance
- “Upon the expiration of the period of Federal financial assistance which is provided to the Government of the Northern Mariana Islands pursuant to section 1803 of this title, payments of direct grant assistance shall continue...In fiscal year 2003, the payment to the Commonwealth of the Northern Mariana Islands shall be \$5,420,000. ***Such payments shall be subject to an equal local match...***
- *Note that this provision was written in 1986, after the 1469a waiver provision (1977-78).

Case Example cont'd

- The National Maritime Heritage Grants Program requires an equal match from “States” (54 USC 308703(d)(2))
- “To qualify for a direct grant to or a subgrant from a State Historic Preservation Officer ...(2) **must match the amount of the direct grant or subgrant, on a 1-to-1 basis**, with non-Federal assets from non-Federal sources, which may include cash or donated services fairly valued as determined by the Secretary”
- “State” is defined as (1) a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands; and (2) the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (NHPA, 54 USC §300317)

*Maritime Heritage Grant program and NHPA definition of “state” provisions are from 2014

Consolidation of Grants & Waiver of Application and Reporting Requirements

Agencies can consolidate grants

All subsections of § 1469a + Pub. L. 96-205: For grants to the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands:

- § 1469a(a): All agencies may consolidate any or all grants made to insular areas for any fiscal year(s) as long as three conditions are met:
 - The Act of Congress providing funding authority specifically provides for making grants to Insular Areas;
 - Payments received by Insular Areas are to be used only for certain specified purposes; and,
 - Payments received by Insular Areas are NOT for direct payments to classes of individuals.
- § 1469a(b): The sum total of the consolidated grants cannot be less than the total of the grants if they had not been consolidated.

Insular Areas have broad discretion on how to allocate funds from a consolidated grant

- § 1469(c)
- Insular Areas must use funds for the programs and purposes authorized for any of the grants which are being consolidated
- Insular Area grantees can determine which proportion of the funds will be allocated to the authorized programs and purposes

Application and reporting requirement waiver rules are different for DOI and other agencies

§ 1469a(d) and Pub. L. 96-205:

- DOI MUST waive any requirement that an Insular Area submit an application or written report with respect to any consolidated grant (no discretion)
- All other agencies: MAY waive application and written report requirements for consolidated grants - discretion

Summary/Conclusion

- Match Funds:
 - 48 USC 1469a and Pub. L. 96-205 set different rules for agencies' waiver of matching fund requirements.
 - DOI must waive regardless of the match amount; all other agencies are required to waive only when match amount is under \$200,000. If match amount is \$200,000 or above, agencies still have discretion to waive match.
- Consolidation:
 - Agencies may consolidate grants to Insular Areas if three conditions are met.
 - DOI must waive application and written report requirements for consolidated grants; other agencies have discretion in waiving those requirements.

Thank you!

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