



Thirty-Second Board Meeting Communication on Status of Recoveries

The Global Fund Thirty-Second Board Meeting**GF/B32/17****Board Decision****COMMUNICATION ON STATUS OF RECOVERIES****Purpose:**

1. This report details the progress made in clarifying the roles of the Secretariat and the Office of the Inspector General in reporting and following up on issues of misuse of funds.
2. Acknowledging the work undertaken by the OIG and the Secretariat to develop a system through which the OIG shares information regarding non-compliant expenditures identified through audits and investigations, and the Secretariat utilizes such information to carry out its efforts in related recoveries, the Audit and Ethics Committee recommends to the Board a revision to Decision Point GF/B23/DP28 (Communication of Losses and Recoveries arising from OIG Audits and Investigations).

BACKGROUND

1. At its Twenty-Third Meeting, the Global Fund Board requested that the Secretariat and the Office of the Inspector General (“OIG”) jointly publish a Losses and Recoveries Report before each regular scheduled meeting of the Board.¹ This Decision Point requires the report to contain certain background information and a table listing data on losses and recoveries.
2. At its 7th Meeting, in February 2014, the Audit and Ethics Committee (“AEC”) reviewed the draft Losses and Recoveries Report submitted pursuant to this decision of the Board. As part of this review, the AEC discussed the need to submit a joint report from the Secretariat and the OIG on losses and recoveries in order to be compliant with the Board’s decision from 2011. However, the Committee also noted that the decision point was passed at a time when OIG-Secretariat relations were not at the present level of effectiveness and considered concerns raised by the Inspector General regarding the joint approach. Such an approach conflicts with the need to maintain the independence of the OIG, which provides assurance on all aspects of the Secretariat’s activities, including the recoveries process.²
3. The AEC thus concluded that the report could be prepared by the Secretariat alone if accompanied by a general endorsement by the OIG. The AEC further agreed that this endorsement could take the form of a negative assurance, communicating the OIG’s comfort with the text of the report and the figures stated. The AEC found that this approach enhanced the purpose of the original Board decision by appropriately allowing the Secretariat and the OIG to independently confirm the components of the recoveries process which are under each of their respective responsibilities while allowing for the Secretariat and the OIG to coordinate a joint correspondence to the Board.
4. In line with this determination, the Losses and Recoveries Report prepared by the Secretariat was shared with the Board in advance of its Thirty-First Meeting and included an explanation of the method and process for determining recoverable amounts.³ The Losses and Recoveries Report contained a table which detailed, among other items, (i) the amounts reported by the OIG as being misappropriated, unsupported, ineligible or other; (ii) management adjustments to the OIG-reported figures; and (iii) the amounts deemed recoverable.
5. The submission of that Report to the Board also included a cover note from the Inspector General regarding the OIG’s assessment of the validity of certain data contained in the Report. This is also the format followed by the Losses and Recoveries Report reviewed by the AEC at its 10th Meeting and submitted to the Board at this Thirty-Second Board Meeting.⁴
6. The OIG and the Secretariat jointly considered updating the process for the issuance of the Losses and Recoveries Report in light of operational improvements. In order to protect the independence of the Office of the Inspector General and to ensure that appropriate information is reported to the Board, the OIG and the Secretariat recommended to the AEC at its 10th Meeting that the May 2011 Board decision on Communication of Losses and Recoveries arising from OIG Audit and Investigation be

¹ GF/B23/DP28 (Twenty-Third Board Meeting, May 2011), attached as Annex 1.

² The OIG audited the Secretariat’s recovery process in 2013, see GF-OIG-13-049 rev 1, 01 October 2013.

³ GF/B31/13: Losses and Recoveries Report

⁴ GF/B32/16: Losses and Recoveries Report

superseded by a new decision that better reflects current operations and the appropriate role of the Inspector General.

Losses and Recoveries Process Developments

7. As previously noted to the Board by the Inspector General,⁵ the current policy and operational landscape are materially different from that which gave rise to the previous decision point on communication of losses and recoveries. During the time since the Twenty-Third Board Meeting in May 2011, the way in which the OIG reports on compliance by recipients and the Secretariat's processes leading to determination of recoverable amounts, management adjustments, and recoveries have all been significantly refined, clarified and improved.
8. Since May 2011, the Secretariat and the OIG have clarified their respective roles in reporting and following up on issues of misuse of funds. The OIG, through its investigation and audit reports, quantifies expenditures linked to compliance issues with the grant agreement, focusing on lapses in oversight and expenditures compromised in various ways. In addition, whenever possible, the OIG strives to provide contextual information to help the Secretariat determine the appropriate amount for recoveries, notably by providing (where available and appropriate) overpricing analyses or information on damages and other costs or losses. Amounts presented in OIG reports may include, but are not limited to, the consideration of financial "loss". Prior to the publication of any investigation or audit report, the OIG ensures that principles of country ownership and procedural due process have been respected by notifying the relevant Country Coordinating Mechanism and entities involved of the details of the OIG's findings, providing such entities a time to respond, and incorporating or addressing their comments in subsequently published reports. The OIG also shares details of its findings with the Secretariat and considers any comments received from the Secretariat. This process is memorialized in the Stakeholder Engagement Model that the OIG developed as part of its Communication Strategy, which was reviewed and endorsed by the AEC at its 7th Meeting in February 2014 in accordance with its Board-delegated authority to approve approaches for communications to stakeholders in response to OIG reports.⁶
9. The Secretariat, through its recoveries process, considers whether additional actions are needed to come to a final conclusion as to the amount to be recovered based on the findings of the OIG, including the review of the categorization and calculation of amounts, consideration of possible retroactive approvals of expenditures where sound rationales exist, the commissioning of additional documentary reviews where necessary⁷ and the consideration of business factors in determining appropriate approaches towards recovery. This includes a review to determine the legal basis for recovery. After due consideration of all relevant factors, the quantified amount is then pursued for recovery from the recipient.
10. The recoveries process is managed by a Recoveries Committee comprising the Chief Risk Officer (Chair), the Head of Grant Management, the Treasurer and the Head of Legal and Compliance. The OIG is invited to each Committee meeting as an observer. Decisions on recovery actions relating to OIG reports, including management

⁵ Cover letter from the Inspector General, dated 14 February 2014, attached to Losses and Recoveries Report, GF/B31/13.

⁶ Charter of the Audit and Ethics Committee, 14 September 2012, section B.2.1.d.

⁷ Such additional reviews may include expansion of the sampling scope or consideration of new documents submitted by recipients. The OIG validates the terms of reference of any additional reviews and performs a desk review of the suitability of the work proposed before any such reviews are undertaken.

adjustments and write-offs, are taken by the Executive Director on advice of the Recoveries Committee and benefit from the OIG's participation in recoveries discussions. The OIG does not otherwise participate in the recoveries process.

11. An additional point that has been clarified since May 2011 is the use of the word "losses". The previous decision point assumed that (i) all problematic amounts identified by the OIG were "losses", and (ii) identified "losses" (i.e., amounts identified by the OIG as problematic) and amounts sought for recovery would be equivalent amounts. This created inconsistency, as the OIG's remit is to identify all expenditures that did not comply with the grant agreement, whether or not they resulted in financial loss to the Global Fund, and recoveries sought may not be the exact same as the OIG-identified amounts.
12. In addition, the grant agreement affords the Global Fund broad rights to recover funds in case of contractual breaches, and is not limited to the recovery of financial loss. While in most instances, the Secretariat will aim to recover a fair and reasonable amount corresponding to financial loss (and/or related costs) incurred as a result of the non-compliance of recipients, the flexibility to pursue amounts exceeding loss should be retained for potential application in egregious cases of fraud and abuse. For these reasons, the use of the word "losses" in the previous decision point was viewed as both unnecessarily limiting and confusing.

Independence of the Office of the Inspector General

13. In order for the OIG's assurance function to be able to conduct an independent audit of the end-to-end recoveries process, the OIG should not jointly prepare a report with the Secretariat which may create the perception that the OIG is part of the recoveries process or plays an active part in the decision-making process related to recoveries
14. The OIG's role in the recoveries process is a delicate one. The main purpose of OIG reports is not to direct subsequent recovery activities. Rather, it seeks to transparently and accurately reflect the state of Global Fund processes and funded programs.
15. In reports where the inappropriate use of grant funds is highlighted, the OIG has clarified that it makes findings based on contractual compliance and, as part of an agreement with the Secretariat, provides observations, analysis or recommendations that can be factored into management's operational decisions. As such, the figures reported by the OIG are not intended to directly reflect an appropriate amount for recovery (as noted above). This allows the Secretariat to make its own assessments on financial loss or appropriate remedial actions, with the benefit of information reported by the OIG, while avoiding the potential challenge where the OIG may audit its own assessments and recommendations.
16. The OIG expects the Secretariat to reflect on reported figures primarily as a measure of the gaps in grant management oversight and compliance they represent. The process of recovering the appropriate amounts given the contractual breaches comes as a second step.
17. The OIG works closely with the Secretariat, in particular the Country Teams, in the finalization of OIG reports to ensure that figures reported are clearly understood and helpful in assisting the Country Teams and the Recoveries Committee in making a determination on recoveries.
18. The proposed Decision Point ensures an optimal input of the OIG in the recoveries discussions, clarifies expectations regarding the type of information the OIG is

expected to communicate and ensures the Board can receive assurance on all aspects of the Secretariat's activities.

RECOMMENDATION

19. In light of the procedural changes described above, the refinement of the respective roles of the OIG and Secretariat in the audit, investigation and recoveries processes, and concerns about maintaining the independence and effectiveness of the Inspector General, the AEC recommends that the Board supersede the existing decision on losses and recoveries with the updated Decision Point below. Under the proposed Decision Point, the Secretariat will produce a Recoveries Report, while the OIG will provide separate assurances on the recoveries process through regular reporting on the implementation progress of agreed management actions, and by reviewing recoveries-related activities as part of its audit plan as agreed with the AEC.⁸ In this manner, the Board will continue to receive progress updates and independent assurances over the recoveries process and the figures in the Recoveries Report.
20. The Secretariat proposes to align preparation of the Recoveries Report more closely with the preparation of the Global Fund's financial statements, such that a semi-annual report will be presented as of 30 June and 31 December of each year. The Recoveries Report will clearly link amounts sought for recovery to OIG findings, describe the process and method for determining final recoverable amounts and report on the progress on any outstanding recovery actions.
21. The proposed decision point also recommends certain minor changes to reflect changes in the Global Fund's governance structure that have taken place since the Twenty-Third Board Meeting. It recognizes the respective oversight responsibilities of the AEC and the Finance and Operational Performance Committee ("FOPC") with regards to the Recoveries Report's underlying information and processes. Furthermore, the AEC will engage with the FOPC given its oversight of financial management and operational matters that factor into the development and updating of the Recoveries Report (e.g., progress on recovery actions, response to OIG recommendations and findings).
22. Under the proposed approach, the Board will continue to receive the information it needs to be appropriately updated on the Secretariat's management of the recoveries process.

⁸ Decision Point GF/AEC10/EDP01: Approval of the OIG's 2015 Audit Work Plan

DECISION

23. On the basis of the rationale detailed above, and on the recommendation of the Audit and Ethics Committee, the Board is requested to approve the following Decision Point:

GF/B32/DP04 – Communication on Status of Recoveries

1. As outlined in GF/B23/DP24 and reiterated in GF/B23/DP28, the Board continues to work with a full commitment to transparency and to endeavor to uphold the independence of the Office of the Inspector General (the “OIG”) within the Global Fund. In order to further promote this independence, the Board decides to supersede GF/B23/DP28 in its entirety with this decision point (GF/B32/DP04).

2. The Board recognizes the need to have clear, consistent and contextualized information regarding the status of recoveries related to non-compliant expenditures identified within grant programs financed by Global Fund resources.

3. With respect to non-compliant expenditures identified from OIG audits and investigations, the Board requests the Global Fund Secretariat to prepare a Recoveries Report (the “Report”) for the periods ending 30 June and 31 December of each year. The Report will detail, among other items:

- (i) the amounts reported by the OIG as being non-compliant and/or as constituting financial loss;***
- (ii) the amounts deemed recoverable by the Secretariat based on the OIG’s findings, including an explanation of the method and process employed for the determination of such amounts; and***
- (iii) progress on outstanding recovery actions, including a description of the context within which recovery-related processes are being handled by the Secretariat and any lessons learned.***

4. The Board requests the AEC to:

- (i) review the Report;***
- (ii) engage with the Finance and Operational Performance Committee (the “FOPC”) on matters within the FOPC’s mandate that relate to the process of developing and updating the Report; and***
- (iii) present any recommended amendments to this decision point to the Board for approval.***

5. Following the review of the Report by the AEC, the Secretariat shall submit the Report to the Board.

6. Furthermore, the Board directs the Secretariat to develop, for AEC approval, a methodology and format for future reporting within the Report, which describes measures taken with respect to recoverable amounts identified in the due course of grant management operations.

7. The Board requests the OIG to report independently on the Secretariat’s progress on matters related to recoveries as part of the OIG’s Report to the Board or as otherwise determined by the AEC.

Decision Point GF/B23/DP28

**Communication of Losses and Recoveries arising from OIG Audits and
Investigations**

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Twenty-Third Board Meeting
Geneva, Switzerland, 11 -12 May 2011

Communication of Losses and Recoveries arising from OIG Audits and Investigations

Decision Point GF/B23/DP28:

As outlined in GF/B23/DP24, the Board reiterates its full commitment to transparency, and to the independence of the Office of the Inspector General within the Global Fund.

The Board recognizes the need to have clear, consistent and contextualized information regarding the status of losses identified from OIG audits and investigations, as well as the status of efforts to recover losses, which can then be made public.

Accordingly, the Board requests the Global Fund Secretariat and the OIG, under the oversight of FAC, to jointly publish before each regular scheduled meeting of the Board, a Losses & Recoveries Report (“Report”) containing background information and an updated table in the format outlined in Attachment 1 to GF/B23/6.

The Board requests the FAC to:

- Oversee the process to create/update this report and table.
- Ensure requests for clarifications are addressed to their satisfaction.
- Report to the Board on their oversight of this process.

The table shall only contain information on identified losses when:

- The principle of country ownership has been respected by notifying the Country Coordinating Mechanism (CCM) and the entities involved, of the details of the losses claimed, where they have been provided with appropriate time to respond, and this response is incorporated by the OIG in the publicly available reports.
- The details of losses identified have been submitted to the Global Fund Secretariat and comments have been considered by the OIG.
- The Global Fund’s Legal Counsel has made a determination that the Global Fund is entitled to make a claim for recovery against an entity based on the work of the OIG.

- These figures have been made public, i.e. the OIG has reported a number either through a specific public report or through the OIG Progress report to the Board which will also be made public, or the OIG has notified the FAC in writing.

The usefulness of the application of the Losses & Recoveries Report for information sharing and communication will be reviewed by FAC before the second Global Fund Board meeting of 2012.

The Board requests that the High Level Independent Review Panel on Fiduciary Controls and Oversight Mechanisms consider and provide guidance on the issues surrounding the use of a denominator to serve as a communication tool regarding the scale and evolution of losses in Global Fund supported programs, as part of their interim report.

This decision does not have material budgetary implications for the 2011 Operating Expenses Budget.