



Department of Homeland Security Office of Inspector General

Assessment of FEMA's Public Assistance Program Policies and Procedures



Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 8, 2009

Preface

The U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses concerns raised by the U.S. House of Representatives Committee on Transportation and Infrastructure regarding the policies and procedures of the Federal Emergency Management Agency's Public Assistance program. It is based on interviews with employees and officials of relevant entities, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

DHS	Department of Homeland Security
EHP	Environmental and historic preservation
EMMIE	Emergency Management Mission Integrated Environment
FEMA	Federal Emergency Management Agency
GPRA	<i>Government Performance and Results Act of 1993</i>
IRS	Internal Revenue Service
NEMIS	National Emergency Management Information System
NEPA	<i>National Environmental Policy Act</i>
OIG	Office of Inspector General

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OMB	Office of Management and Budget
PA	Public Assistance
PW	Project worksheet
Stafford Act	<i>Robert T. Stafford Disaster Relief and Emergency Assistance Act</i>

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Executive Summary

We performed this audit in response to Congressional concerns over the design and implementation of the Federal Emergency Management Agency's Public Assistance program. Our objectives were to: (1) determine the efficacy of processes and procedures used to generate project worksheets, including the completeness, accuracy, and timeliness of project worksheets; and (2) identify alternatives to streamline the project worksheet process.

The project worksheet process is hindered by untimely funding determinations, deficiencies in program management, and poorly designed performance measures. FEMA needs to improve the timeliness of the project worksheet process for appeals, environmental and historic preservation reviews, and insurance settlement reconciliations. Also, FEMA needs to reduce employee turnover and improve classroom and on-the-job-training for disaster officials. Further, FEMA needs to improve Public Assistance program performance objectives and measurements.

To satisfy our second objective, we identified alternatives to streamline the Public Assistance process, including potential benefits and concerns. These alternatives include: negotiated settlements; an increase to the large project threshold; the replacement of grants with prescribed mission assignments; the transfer of other federal disaster programs to FEMA; and interval payments.

We are making 16 recommendations aimed at improving FEMA's process for reviewing and approving Public Assistance projects. FEMA generally concurred with the majority of these recommendations and agreed to provide corrective action plans within 90 days.

Background

When disasters occur, local communities respond first, followed by the state, if necessary. Federal assistance may be requested under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act) when the magnitude of the disaster exceeds local and state capacity. The Federal Emergency Management Agency Public Assistance (PA) program provides critical assistance, in the form of direct assistance and grants, to state, tribal, and local governments, as well as certain private nonprofit organizations, to enable communities to quickly respond to and recover from major, presidentially declared emergencies and disasters.

FEMA awards grants to provide supplemental assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of eligible disaster-damaged facilities. The PA program also encourages protection of damaged facilities from future disasters by providing funding for hazard mitigation measures. PA funding has been substantial, totaling more than \$30 billion for the past decade.

The PA program is administered through a coordinated effort among FEMA, grantees, and subgrantees, each with different roles. FEMA manages the PA program, approves grants, and provides technical assistance to the grantees and subgrantees. In most cases, states are the FEMA grantees, while local governments and eligible private nonprofit organizations are the subgrantees.

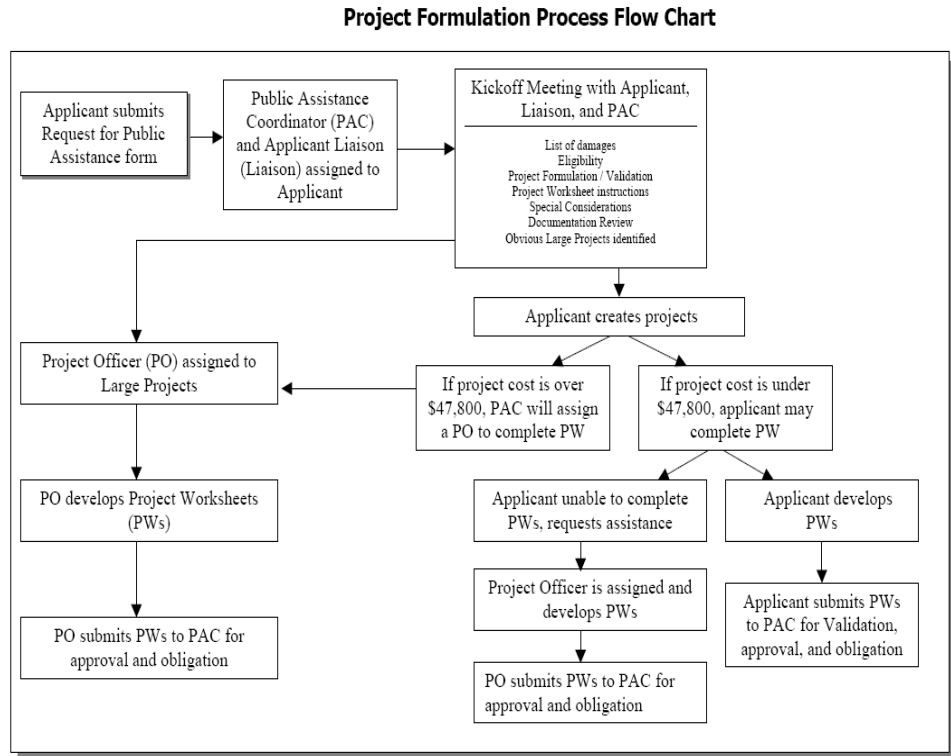
The grantee educates potential applicants, works with FEMA to manage the program, and is responsible for implementing and monitoring the grants awarded under the program.

Subgrantees are responsible for identifying damages, submitting the request for public assistance, and documenting and completing response and recovery efforts approved under the program.

The project worksheet (PW) provides the basis for awarding PA grants and is used to document the location, damage description, scope of work, and cost estimates for each project. The PW process generally includes an initial site inspection by a FEMA project officer who subsequently writes a PW that includes the scope of work and estimated project costs. During this process, FEMA's project officer is responsible for coordinating with the grantee and subgrantee to prepare the PW. FEMA or state officials

assign a Public Assistance Coordinator crew leader to serve as the subgrantee’s customer service representative on PA program matters.

The PA program project formulation process depicted in the following chart illustrates the steps in developing and approving PWs:



Source: FEMA

Note: The large project threshold for 2009 has been adjusted to \$64,200 vs. the \$47,800 shown above. Applicants become subgrantees upon FEMA’s approval of the Requests for Public Assistance.

As a result of the devastation caused by the 2005 Gulf Coast hurricanes, scrutiny of FEMA’s program policies and procedures has increased significantly, as demonstrated by detailed inquiries by Congress, the DHS Office of Inspector General, the Government Accountability Office, and the media. These inquiries have focused particularly on the timeliness of FEMA decision making; the technical proficiency of FEMA personnel and contractors; the need for better communication and coordination among FEMA, grantees, and subgrantees; and inconsistency in policy interpretations and funding determinations.

Results of Audit

FEMA needs to: (1) improve the timeliness of appeal determinations, the environmental and historic preservation (EHP) process, and insurance settlements; (2) reduce program management deficiencies in such areas as initial PW procedures, eligibility determinations, and cost estimates; and (3) improve the measurement and achievement of PA performance and objectives. Contributing factors to program deficiencies include: the absence of timeline criteria for portions of the PW process; employee turnover and inexperience; and insufficient analyses of performance measurement methodology and objectives. Improvements need to be achieved by setting timelines for all key actions, overhauling the system for staffing and training disaster personnel, and changing performance measurement methodology and clarifying objectives. These improvements will provide more efficient recovery from disasters.

Timeliness of Funding

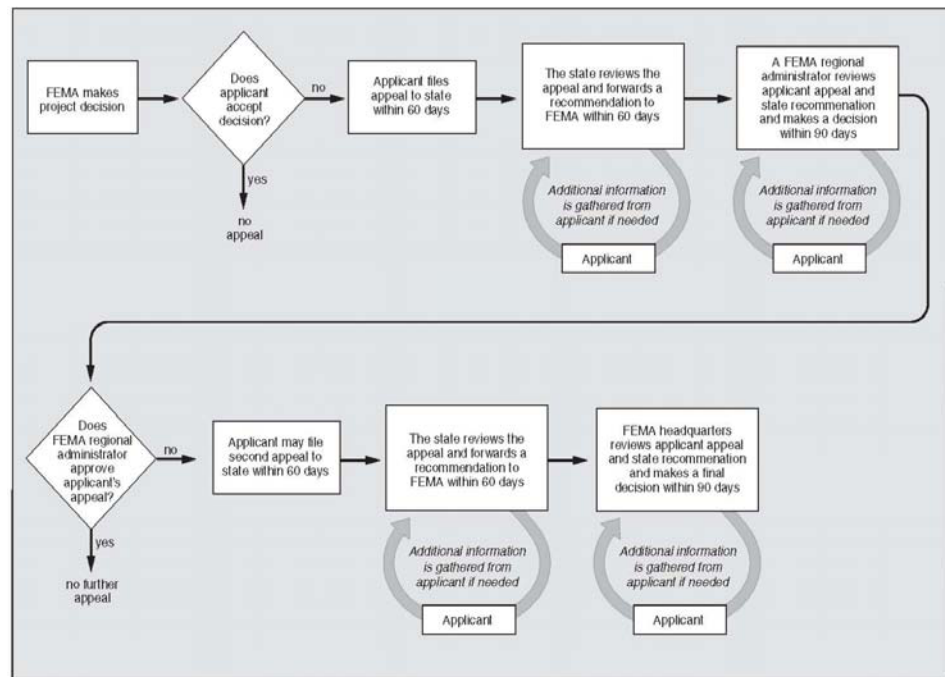
FEMA needs to improve the timeliness of PA funding, while ensuring PW accuracy and completeness, to avoid project delays and to improve overall program efficiency. FEMA's Strategic Plan commits FEMA to provide "timely disaster assistance to hasten the recovery of individuals and communities." However, funding to grantees and subgrantees is often delayed because of: (1) appeals processing time; (2) the EHP process; and (3) the reconciliation of insurance settlements. Improvements in these procedures will improve subgrantees' cash flow and facilitate more timely completion of their projects.

Appeal Determination Process. FEMA takes excessive time to process appeals because it does not: (1) adhere to, or has not set, timeliness standards for the appeals determination process; (2) have a standardized system to track appeals; and (3) offer an agency-wide mediation process for appeals that have reached impasse.

The appeal process is the opportunity for subgrantees to request reconsideration of decisions regarding project scope and funding. Subgrantees must file an appeal with supporting documentation through the grantee to the appropriate FEMA regional office within 60 days of receiving what they consider an unfavorable FEMA decision. If the first appeal is not successful, the subgrantee may submit a second appeal through the grantee to FEMA headquarters. FEMA officials are required to make a final decision within 90 days of receipt of the request for each appeal, unless they request additional information from the subgrantee.

FEMA does not have established timelines for receiving additional information or analysis during the second appeal process.

The following diagram depicts the process for appealing FEMA funding decisions:



Source: GAO analysis of FEMA information.

FEMA does not consistently adhere to timeliness standards governing the amount of time its officials have to provide determinations on appeals. We reviewed appeals that showed, on average, FEMA rendered a decision after about 7 months for first appeals, and after about 10 additional months for second appeals. In some cases, the appeal process spanned several years. For example, a subgrantee submitted a first appeal on February 27, 2005, and received an unfavorable response from FEMA on October 20, 2006, an elapsed time of about 20 months. On March 9, 2007, the subgrantee submitted a second appeal and received a response from FEMA 17 months later, on August 7, 2008. In this example, the total elapsed time for the appeal process was about 3 years.

FEMA has no agency-wide system of tracking appeals from submission date to final determination. As a result, FEMA has no standardized means to identify delays for each appeal. This condition is compounded by incomplete record keeping on appeals. Both factors contribute to FEMA's misperception that the

appeal process is timely, and thus to its inaction in correcting systemic delays.

Subgrantees expressed dissatisfaction with the appeal process, and some suggested creating an appeals mediation board or ombudsman's office to resolve issues that have reached an impasse. Such options have already been created for the Gulf Coast states most affected by hurricanes Katrina and Rita. Louisiana, Mississippi, and Texas can use FEMA's Appeals Arbitration Panel to resolve issues that have reached an impasse, and may also collaborate with joint FEMA-state teams to address more immediate operational issues.

EHP Process. FEMA takes excessive time to complete the EHP process because it does not manage it proactively. This can result in significant project delays, thus preventing communities from quickly responding to and recovering from major emergencies or disasters.

FEMA is required to determine subgrantee compliance with applicable environmental and historic preservation laws, regulations, and executive orders before PA funds are provided and work can begin. Federal regulations require the use of the *National Environmental Policy Act* (NEPA) review process to ensure compliance with relevant environmental laws, regulations, and Executive Orders. NEPA requires every federal agency to follow a specific planning process to ensure that FEMA, the state, and local governments have considered, and the general public is fully informed about, the environmental consequences of a federal action prior to starting a project. The *National Historic Preservation Act* likewise provides a review process—prior to the beginning of work—and requires federal agencies to consider the effects of their projects on any district, site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places.

Although the EHP process can be inherently time-consuming, unnecessary delays occur because FEMA does not:

- Perform EHP work consistently, early in the disaster recovery process,
- Triage EHP workload based on importance,
- Require formal time limits for the EHP process,

-
- Coordinate sufficiently, and establish pre-disaster agreements, with other federal agencies involved in the EHP process, or
 - Coordinate state EHP workload to mitigate duplicative efforts.

Delays have occurred, for example, when a Gulf Coast subgrantee waited more than 2 years while FEMA considered demolishing numerous structures that were destroyed by Hurricane Katrina. Ultimately, the subgrantee chose to proceed with the work without FEMA's approval because the structures posed health and safety risks to the community. This exemplifies the need for FEMA to implement an efficient EHP process.

Insurance Settlements. Subgrantees encounter delays in completing work on insured structures as a result of monetary shortfalls while awaiting final settlement from the insurer. To prevent duplicative benefits, the Stafford Act requires FEMA to reduce the funding for eligible work by the amount of any anticipated insurance proceeds. Upon final settlement, the subgrantee may submit a claim to FEMA for any costs not reimbursed by the insurer. However, insurers can take years to reach a settlement, thus creating cash flow problems for the subgrantee. Although subgrantees can receive advances from FEMA, many are generally not in favor of addressing cash flow problems through this option because of financial management and accountability concerns.

Conclusion

FEMA's PA funding is delayed by insufficient timelines for PW actions pertaining to appeals, the EHP process, and insurance settlements. The appeals process lacks complete timeliness standards, an agency-wide means to identify delays, and a mediation process for unresolved complex issues. The inherently time-consuming EHP process is prolonged by FEMA's untimely, unstructured, and uncoordinated reviews. Projects are also delayed while subgrantees await insurance proceeds. Addressing these issues would significantly improve the timeliness of PA project funding.

Recommendations

We recommend that the FEMA Administrator:

Recommendation #1: Establish a complete set of standards for achieving timeliness in the appeals process and adhere consistently to those standards previously established.

Recommendation #2: Develop and implement a tracking system that records the status and timeliness of each appeal.

Recommendation #3: Establish a FEMA-wide mediation or arbitration process for appeals that have reached an impasse. Refer claims that have reached an impasse within FEMA's appeals system to the mediation or arbitration board.

Recommendation #4: Initiate and triage EHP workload, immediately after a disaster, based on importance and not necessarily the order in which received.

Recommendation #5: Establish and enforce formal time limits for the EHP process.

Recommendation #6: Coordinate the EHP process through programmatic or similar agreements with other federal agencies and state entities involved.

Recommendation #7: Provide funding for projects that will later be covered by insurance proceeds when the insurer and the insured (subgrantee) agree to subrogate all applicable funds to FEMA.

Management Comments and OIG Analysis

Appendix B provides the complete text of FEMA's responses to these seven recommendations. FEMA did not concur with Recommendations 3 and 5. Consequently, for the reasons stated in Appendix C, *OIG Analysis of Management Comments to the Draft Report*, we consider these two recommendations unresolved. While FEMA concurred with Recommendations 1, 4, and 6 and considered them closed, it did not address the core issue of timely appeals determinations subsequent to its requests for additional information. We also consider these recommendations unresolved for the reasons included in Appendix C which provides additional details concerning the finding and recommendations. We consider Recommendations 2 and 7 resolved but open, pending review of corrective actions taken.

Congressional Consideration

The following proposed action is presented for congressional consideration:

Congressional Consideration #1: Provide authority for FEMA to implement a binding arbitration process for appeals that have reached an impasse and direct FEMA to use such a system when appropriate.

Program Management

FEMA needs to improve its management of the PA program by addressing problems in the following areas: (1) determinations by FEMA project officers; (2) revisions to the initial PW; (3) deferral of decisions; (4) scope of work clarity; (5) negotiations with subgrantees on eligibility; (6) acceptance of subgrantees' supporting documentation; (7) repetitive documentation requests; (8) familiarity with codes and standards; (9) hazard mitigation projects; and (10) reasonableness of cost estimates. Effecting changes in these areas will require addressing turnover, inexperience, and lack of training among FEMA personnel assigned to disaster response and recovery, in addition to disseminating a clear and consolidated body of PA guidance. Such changes would also improve program timeliness, as discussed in the preceding section.

Determinations by FEMA Project Officers. Subgrantees experience project delays and excessive administrative efforts because of FEMA's inconsistent determinations on project eligibility. FEMA often reverses course on previous decisions for scopes of work and estimated costs after working with subgrantees for months. This is the result of turnover and rotation throughout the PA process, which requires subgrantees to reeducate new FEMA project officers on the damages.

Revisions to the initial PW. Project delays sometimes occur when FEMA does not accurately estimate costs or scope of work in the initial PW, thereby creating the need for a significant number of PW revisions—sometimes a time-consuming and labor-intensive process. In the PWs that we reviewed, FEMA's PW revision rate was 147%. Moreover, FEMA made substantial funding revisions to many of these PWs. For example, a PW was obligated for about \$645,000 and was revised more than 2 years later to increase the obligation amount to about \$12 million as a result of revisions to the damage description and scope of work. Although PW revisions may be justified in some cases—such as

the discovery of hidden disaster damage—revisions can also occur as a result of FEMA’s: (1) insufficient communication with the grantee and subgrantee throughout the PW determination process; (2) inconsistent inclusion of state-assigned PA personnel to provide assistance in key meetings with the subgrantee; and (3) a focus on speed rather than accuracy in an attempt to improve performance measurement results or address subgrantee cash flow problems. The number of revisions and supplemental funding highlights the need for greater diligence and precision in the initial PW preparation process.

Deferral of decisions. FEMA officials often defer making project decisions—particularly those related to substantial cost overruns or scope changes—until closeout. These deferrals preclude timely site inspections and reviews that would determine cost eligibility more reliably, thereby subjecting subgrantees to risks that costs and scope changes ultimately will be determined ineligible. FEMA’s rules require its officials to take appropriate action upon notification of the subgrantee’s request for a budget or scope increase. Deferrals may occur as a result of insufficient FEMA personnel, especially those who are qualified to make efficient and appropriate decisions on issues as they arise. For example, we reported in July 2008 that a subgrantee requested that FEMA provide supplemental funding (approximately \$1.5 million) for project management and monitoring of debris removal.¹ FEMA officials deferred the decision until closeout, more than 3 years after the original request was made. The grantee participated in this process and did not object to FEMA’s decision. Despite the deferral, the subgrantee proceeded with the work without knowing whether FEMA would ultimately approve the costs.

Scope of work clarity. FEMA officials create delays when they do not include sufficient detail on scopes of work in the PWs. This can cause problems when the grantee requires that the PW scope of work exactly match the cost documentation. For example, when a PW has a broad scope of work, such as “repair wall damage,” the grantee may not reimburse the subgrantee for all the eligible work (for example, repainting the wall) because the item of work was not specifically mentioned in the PW.

Negotiations with subgrantees on eligibility. Subgrantees said that project officers inappropriately ask for concessions on some items of work in exchange for approval of other items. This puts subgrantees in a difficult situation and detracts from FEMA’s

¹ DS-08-04; July 7, 2008.

professionalism and ability to instill confidence in its customers. FEMA is required to determine eligibility based on established federal criteria, not through negotiation or deal-making.

Acceptance of subgrantees' supporting documentation. FEMA does not consistently consider documentation provided by subgrantees that would expedite the PW preparation process. For example, a subgrantee took photos within 10 days of a disaster and prepared thousands of work orders. FEMA officials arrived months later and refused to consider the subgrantee's documentation. As a result, this subgrantee is prepared to appeal should FEMA's final determinations conflict with information captured within the documentation. Subgrantees said that FEMA officials exhibit an attitude of mistrust.

Repetitive documentation requests. FEMA officials sometimes require subgrantees to resubmit documentation that was previously provided. Repetitive documentation requests impose a significant administrative burden on all parties, as well as project delays. Multiple requests for documentation are generally the result of the inadequate transition between FEMA officials when turnover occurs.

Codes and standards familiarity. FEMA officials do not consistently apply local building codes and standards in determining eligible work for PWs, resulting in appeals and significant project delays. This is caused by the lack of familiarity with specific local building requirements. For example, funding for upgrades required by local codes and standards is eligible under FEMA's criteria. However, because of their inexperience with local codes, FEMA officials incorrectly determined that damaged school buildings were ineligible for roof replacement.

Hazard mitigation projects. FEMA does not consistently identify or properly interpret PA hazard mitigation work eligibility. This results in untimely or inaccurate funding determinations after work has been completed, and effectively prevents the subgrantees from performing eligible mitigation work. For example, FEMA officials informed a subgrantee, 18 months after they approved the initial PWs, that hazard mitigation was eligible. At that point, the subgrantee had already performed the work, thus rendering hazard mitigation work infeasible. In another example, a subgrantee spent \$3.8 million for a repair and hazard mitigation project based on FEMA's recommendations. Later, another FEMA official interpreted the project differently and determined that the

mitigation work was ineligible. The subgrantee is awaiting resolution of this issue.

Reasonableness of cost estimates. FEMA sometimes uses *reasonableness* to estimate costs, yet those estimates are sometimes substantially lower than the actual costs. Because FEMA does not always explain the methodology used in determining reasonableness, the estimates may appear, or may actually be, arbitrary. FEMA’s policy allows for reasonable cost determinations to be made by such means as historical documentation for similar work, average costs, published costs, and FEMA cost codes. The process could be improved if FEMA explained to the subgrantee the specific methodology used. For example, following Hurricane Katrina, FEMA estimated unit costs for debris removal based on reasonableness, but this estimate was substantially lower than the actual costs. FEMA officials would not approve the actual costs, yet did not inform the subgrantee of the methodology used to determine reasonableness.

Root Causes of Program Management Deficiencies: Employee Turnover, Inexperience, and Lack of Training

Program management deficiencies are caused principally by turnover, inexperience, and lack of training within FEMA’s disaster workforce. These issues derive from FEMA’s disaster staffing system. In addition, FEMA personnel do not have access to a clear and consolidated body of PA guidance that would facilitate their comprehension of the program.

Nearly all of the subgrantee officials interviewed said that turnover of FEMA’s disaster personnel creates significant problems in program management. FEMA’s workforce is drawn nationwide from permanent employees, intermittent employees, and contractors. These employees—generally assigned to areas away from their homes—may lack the commitment for long-term assignments, as well as knowledge of critical local issues such as contractor availability and pricing. Further, FEMA sometimes transfers these employees to other disaster sites before the recovery process is completed at the site to which they were initially assigned. Both of these scenarios result in a “revolving door” effect. This condition is exacerbated because FEMA has not established permanent offices in states most vulnerable to recurring, large-scale disasters.

Turnover also occurs because FEMA’s temporary workforce is subject to limitations of availability due to Internal Revenue

Service (IRS) tax implications and federal annuitant offsets for extended temporary duty. These restrictions prompt employees to end their employment prematurely, even after only 1 year. IRS residency rules require travel reimbursements to be treated as taxable income after an employee is assigned to a location for an extended period. Federal rules pertaining to retired government employees and Social Security recipients require offsets to annuities based on compensation. Bills have been introduced in Congress, subsequent to Government Accountability Office findings, addressing restrictions on hiring and retaining retired government employees for critical workforce needs.

FEMA's workforce generally lacks sufficient experience and training to perform the responsibilities of the PA program efficiently. Following a disaster declaration, FEMA employs many local, intermittent, and contract personnel who have little experience in, or knowledge of, FEMA's PA program policies and procedures. These employees do not receive formal training until a disaster has occurred. Moreover, this training provides only basic PA program information and is limited to classroom instruction, sometimes delivered by temporary personnel. FEMA officials' insufficient experience and training is apparent when subgrantees need to explain eligibility rules to them as PWs are being developed.

FEMA acknowledged the problematic nature of employing personnel who have little or no previous PA experience, and attribute this to budgetary constraints that restrict training of intermittent employees prior to their deployment. However, FEMA is developing a standardized web-based credentialing system to assure that employees deployed to a disaster site are qualified to perform their duties. This system is intended to track employee qualifications, experience, education, mentoring, and training. Credentialing should ensure that employees deployed to a disaster site have the qualifications and training to perform their assigned duties adequately.

The lack of a single resource that includes all of FEMA's PA publications and policies leads to inconsistent interpretations and understandings of FEMA's rules. Currently, FEMA has a multitude of PA documents that necessitate reference to multiple sources. This can prove burdensome, confusing, and untimely for disaster officials. For example, FEMA's policy on debris removal is unclear and thus open to interpretation. As a result, some communities have been denied eligibility for debris removal costs, while others have received reimbursements for identical costs.

About \$180 million in debris removal costs after the 2004–2005 disasters in Florida demonstrate the significance of clarifying the debris removal policy. As another example, subgrantees grapple with understanding the cost-effectiveness of FEMA rules pertaining to replacement in lieu of repairs to damaged property when those repairs can cost more than replacement. Although FEMA’s policy allows for the replacement of property when estimated repair costs exceed 50% of the replacement costs, it does not include all eligible costs, such as hazard mitigation, when making the determination.

FEMA’s Public Assistance Division director, acknowledging problems, testified before Congress in July 2007 that FEMA is updating its policy and guidance.² These documents will be compiled in a *Public Assistance Operations Manual* that will be available to FEMA, state, and local officials involved in the disaster response and recovery process. This manual will include all relevant PA guidance and will describe the PA process from the initial stage of doing a preliminary damage assessment to the final stage of closing the disaster. FEMA officials in the Public Assistance Division are in the process of preparing this manual but have not set a date for its release.

Conclusion

FEMA’s PA program management is in need of improvements in initial PW determinations, eligibility clarification, and cost estimations. Problems result from employee turnover, limited training for disaster personnel, and the absence of a PA operations manual.

Recommendations

We recommend that the FEMA Administrator:

Recommendation #8: Restructure FEMA’s disaster workforce into sufficiently staffed regional cadres and deploy personnel only to the geographic area in which they reside, unless nationwide deployment in response to a catastrophic disaster is necessary.

² *Testimony of James Walke, Director, Public Assistance Division, Disaster Assistance Directorate, Federal Emergency Management Agency, Department of Homeland Security, before the Homeland Security and Governmental Affairs Committee, Subcommittee on Disaster Recovery, United States Senate, Washington, D.C., July 10, 2007.*

Recommendation #9: Develop a recruitment plan to target local candidates when long-term disaster recovery efforts will be needed.

Recommendation #10: Require that project officers, consistent with their overall responsibilities as outlined in federal regulations and FEMA PA guidance: (a) document all project activity; (b) convey all relevant documentation and information from predecessor to successor; and (c) review all appropriate documentation prior to visiting the subgrantee.

Recommendation #11: Expedite the development and implementation of a standardized credentialing system to include employee qualifications, training, mentoring, and other applicable information.

Recommendation #12: Expedite the completion and dissemination of the FEMA *Public Assistance Operations Manual* to all disaster personnel.

Management Comments and OIG Analysis

Appendix B provides the complete text of FEMA’s responses to these five recommendations. FEMA concurred with Recommendations 8 through 12. Thus, we consider these Recommendations resolved but open, pending review of corrective actions taken.

Congressional Considerations

The following proposed actions are presented for congressional consideration:

Congressional Consideration #2: Provide authority for an extension or waiver of annuitant and residency stipulations as they affect FEMA disaster personnel assisting in the response and recovery efforts for large-scale disasters.

Congressional Consideration #3: Provide funding for FEMA to establish a permanent, full-time cadre of professional trainers, and direct FEMA to comprehensively educate all FEMA disaster personnel—*prior to*, and *independent of*, a disaster—on FEMA statutes, regulations, policies, and procedures.

Performance Measurement

FEMA could better identify needs for improving the timeliness of PA program funding and closeouts, and the level of customer satisfaction with the PA program, through improved assessments of the PA program's performance. Program performance assessments are required by the *Government Performance and Results Act of 1993* (GPRA), and FEMA has established some appropriate performance objectives to use in judging the PA program's performance. However, the performance objectives in the current assessment methodology need to be clarified and improved to produce more meaningful and useful results of the PA program's timeliness and customer satisfaction.

The GPRA requires federal agencies to evaluate the efficiency and effectiveness of programs and ensure continuous improvement. In furtherance of GPRA, FEMA established the following objectives for measuring PA program performance: (1) obligate 50% of funding within 90 days of declaration; (2) Obligate 80% of funding within 180 days of declaration; (3) close 90% of disasters within 2 years of declaration date; and (4) achieve at least a 90% customer satisfaction rating.

FEMA's current performance measurement methodology does not assure meaningful results for the first two objectives because it gives equal weight to all disasters, regardless of magnitude. Thus, an inability to fund larger, more complex disasters in a timely manner could be obscured by timely performance in funding the far more numerous, but less complex, small disasters. For example, if FEMA were to obligate funding in a timely manner for nine small disasters but not provide timely funding for a single large-scale disaster, FEMA's current performance assessment methodology would show it to be 90% successful. However, were the measurement system to account for the size of each disaster effort by categorizing disasters by magnitude (e.g. small, large and catastrophic), it would assure more meaningful results.

FEMA officials have not measured performance in meeting the third objective because a reporting function does not exist in the National Emergency Management Information System (NEMIS). FEMA officials said the Emergency Management Mission Integrated Environment (EMMIE) system, which will replace NEMIS for PA projects, will provide closeout information and allow evaluation of this performance objective. However a timeline for when this transition will occur is not available. Furthermore, as currently configured, the assessment of this

objective assigns equal weight to the closeout of a small disaster as to that of a large-scale disaster. Thus, the timely closeout of small disasters could obscure the untimely closeout of large-scale disasters.

FEMA had not measured performance in meeting the fourth objective due to the suspension of data collection pending the request for, and the Office of Management and Budget (OMB) approval of, the *FEMA Public Assistance Program Customer Satisfaction Survey*. As of March 2009, FEMA had not resumed data collection, yet did receive OMB approval for the survey. Furthermore, as currently planned, the measurement of this objective will make no distinction in the weight given to the views of subgrantees with many PWs as opposed to those having few PWs. Thus, higher satisfaction levels among the many smaller disasters could obscure customer dissatisfaction regarding large-scale disasters.

Conclusion

FEMA's performance measurement efforts need to be improved in order to provide the accurate and balanced information that is needed to assess, and improve as appropriate, the timeliness and performance of the PA program. FEMA's current system for evaluating timeliness of funding improperly assigns equal weight to all disasters, despite the differences in funding or work load. Performance measurement methodology for the other two objectives has not yet been implemented, but would also not assure meaningful results by not differentiating between disasters of varying magnitudes or the extent of subgrantee funding. FEMA officials need to take appropriate corrective action to improve the PA performance measurement system if it is to fulfill its potential to identify the need for improvement in PA program management and timeliness of efforts.

Recommendations

We recommend that the FEMA Administrator:

Recommendation #13: Use a weighted methodology to assess the timeliness of PA funding obligations that will not statistically conceal major shortfalls on larger disasters.

Recommendation #14: Devise and implement a mechanism to measure timeliness of PA project closeouts for those disasters not

included in EMMIE and revise PA performance objective “close 90% of disasters within 2 years of the declaration date” to differentiate according to disaster magnitude.

Recommendation #15: Conduct PA program customer satisfaction surveys, and revise PA performance objective “achieve at least a 90% customer satisfaction rating” to differentiate between subgrantee funding amounts.

Management Comments and OIG Analysis

Appendix B provides the complete text of FEMA’s responses to these three recommendations. FEMA concurred with Recommendations 13 and 14 but did not concur with Recommendation 15. We consider the first two recommendations resolved but open pending review of corrective actions taken. We consider Recommendation 15 unresolved. Appendix C provides the OIG's analysis of FEMA’s comments and additional details concerning the finding and recommendations.

Congressional Consideration

The following proposed action is presented for congressional consideration:

Congressional Consideration #4: Provide FEMA the criteria that should be used to categorize disasters by magnitude (e.g., small, large, and catastrophic).

Alternatives to Streamline the PA Process

Congress asked that we identify alternatives to streamline the PA process. We identified seven alternatives and considered the potential pros and cons for each. These alternatives include: (1) negotiate settlements for all projects; (2) negotiate settlements for permanent categories of work; (3) negotiate settlements for small projects; (4) increase the large project threshold; (5) replace grants with pre-scripted mission assignments; (6) transfer other federal disaster programs to FEMA; and (7) provide interval payments.

The current PW process provides for final grant settlements on a project-by-project basis after the work is completed. PWs can be changed after the initial write up for a variety of reasons, including inaccurate cost estimates, cost overruns or underruns, or the discovery of hidden damages

or other eligible work. This process allows subgrantees to request reimbursements, through the grantee, on a project-by-project basis, as costs are incurred. Some of the alternatives presented in this section would streamline the PW process through final settlements during the early stages of recovery instead of settlements after the work is completed. Other alternatives would improve the cash flow of subgrantees but would retain other aspects of the current PW process.³

(1) ***Negotiate Settlements for All Projects***. This alternative would change the present PW system for all projects to fixed, lump-sum negotiated settlements between FEMA and the grantee and subgrantee, based on FEMA's final estimates and any pertinent information provided by the subgrantee. Final estimates will be binding and not subject to change for any reason. This process will be completed no later than 6 months after the disaster declaration.

Pros (a) The subgrantee's cash flow would significantly improve early in the recovery process, resulting in reduced project delays; (b) administrative effort at all government levels would greatly decrease, resulting in significant time and money savings for all; and (c) reduction in state and local administrative requirements would be a basis for FEMA to decrease administrative or management fees paid to the grantee and subgrantee.

Cons: (a) FEMA's estimates for the negotiated settlements will likely differ from actual costs, resulting in possible shortfalls or windfalls to the subgrantee with no recourse for either party; and (b) subgrantees may not complete some of the disaster projects and would use that funding for other purposes.

(2) ***Negotiate Settlements for Permanent Categories of Work***. This alternative would provide fixed, lump-sum negotiated settlements, for permanent work categories, between FEMA and the grantee and subgrantee, based on FEMA's final estimates and any pertinent information provided by the subgrantee. Final estimates will be binding and not subject to change for any reason. This process will be completed no later than 6 months after the disaster declaration.

FEMA divides disaster-related work into seven categories: Categories A and B are classified as emergency work, whereas

³ Through the implementation of one or more of these alternatives, the current designation of "subgrantee" and "grantee" may change. We have, however, retained this designation throughout this section to prevent confusion.

Categories C through G are classified as permanent work. The cost for permanent work is generally more feasible to estimate than emergency work because the quantity of work is more definable.

Pros: (a) The subgrantee's cash flow would significantly improve early in the recovery process, resulting in reduced project delays; (b) administrative effort at all government levels would greatly decrease, resulting in significant time and money savings for all; and (c) reduction in state and local administrative requirements would be a basis for FEMA to decrease administrative or management fees paid to the grantee and subgrantee.

Cons: (a) FEMA's estimates for the negotiated settlements will likely differ from actual costs, resulting in possible shortfalls or windfalls to the subgrantee with no recourse to either party; and (b) subgrantees may not complete some of the disaster projects and would use that funding for other purposes.

(3) ***Negotiate Settlements for Small Projects.*** This alternative would provide fixed, lump-sum negotiated settlements between FEMA and the grantee and subgrantee for small projects, based on FEMA's final estimates and any pertinent information provided by the subgrantee. Final estimates will be binding and not subject to change for any reason. This process will be completed no later than 6 months after the disaster declaration. The existing PW system provides expedited payments for projects designated as *small* when the cost estimate is below a certain threshold (\$64,200 for fiscal year 2009), yet such projects are still subject to final audit and inspection at closeout. With negotiated settlements, original damage estimates would be binding and could not be changed for any reason.

Pros: (a) Administrative effort at all government levels would decrease, saving time and money; and (b) reduction in state and local administrative requirements may be a basis for FEMA to decrease administrative or management fees based on PW estimates.

Cons: (a) FEMA's estimates for the negotiated settlements may differ from eligible costs under the small project system, resulting in possible shortfalls to the subgrantee with no recourse; and (b) subgrantees may not complete some of the disaster projects and would use that funding for other purposes.

(4) ***Increase the Large Project Threshold.*** This alternative would keep the current PW process intact but would increase the large project threshold, resulting in a significant increase in the number of PWs classified as *small* projects, as well as in the funding amount for small projects. The PA program differentiates between *small* and *large* projects based on project costs. For FY 2009, the *large* project threshold is \$64,200, regardless of the scale of the disaster; it is increased annually based on the Consumer Price Index. Funding for projects classified as *small* is generally final, and full payment is available upon approval of the original estimate although projects are subject to final audit and inspection. Funding for projects classified as *large* is regularly adjusted throughout the PW reimbursement process.

Pros: (a) Administrative efforts and costs for all parties would be reduced based on the streamlined process for small projects; and (b) subgrantees' cash flow would improve because they would not need to incur costs prior to receiving payment, unlike for projects classified as *large*.

Con: Under the small project criteria, subgrantees retain the total amount of excess funding for all combined small projects, whereas excess large project funding must be returned to the federal government.

(5) ***Replace Some Grants with Mission Assignments.*** This alternative would change the PW system for designated categories of work, such as debris removal, to a pre-scripted system of tasking other federal agencies to perform such work (i.e., mission assignments). Through this alternative, FEMA would assign work and provide funding to another federal agency (e.g., the U.S. Army Corps of Engineers) rather than issuing PWs to grantees and subgrantees.

Pros: (a) Grantees and subgrantees would avoid the documentation, reimbursement, and closeout requirements of the current PW system; (b) experienced federal agencies would be responsible for work, thus increasing the likelihood of improved efficiency and quality control; (c) contracting resources may be greater, resulting in faster completion of projects; and (d) administrative costs paid by FEMA to grantees and subgrantees would be decreased as a result of fewer projects funded by PWs.

Con: Subgrantees may be reluctant to reduce control over work performed within their jurisdictions.

(6) ***Transfer Other Federal Disaster Programs to FEMA.*** This alternative would entail Congress permanently authorizing FEMA to assume responsibility for all federal disaster projects that involve significant hazards to life and property. Currently, other federal agencies—such as the U.S. Department of Agriculture’s National Resources Conservation Service and the U.S. Department of Transportation’s Federal Highway Administration—perform work that, if delayed, could affect public safety and property. Subgrantees experience delays and additional costs because of insufficient funding by the responsible federal agency and difficulty in comprehending the various federal rules of each agency.

Pros: (a) Risks to life and property would be reduced through a more immediate response; (b) subgrantees would not have the burden of learning and adhering to various rules and procedures of other federal agencies immediately after a disaster event; and (c) subgrantees could reduce costs through economies of scale and increased efficiency by having fewer contracts for similar work (e.g., debris removal).

Con: Potentially less funding for subgrantees because of FEMA’s cost-share provisions.

(7) ***Provide Interval Payments.*** This alternative would entail the automatic disbursement of funding to subgrantees at specified intervals of the recovery period based on PW estimates as opposed to the present system of requesting cash reimbursements after costs are incurred. At closeout, FEMA would reconcile eligible project costs with the amount disbursed and determine a final settlement with the subgrantee.

Pros: (a) Administrative and paperwork requirements for the grantee and subgrantee would be reduced as a result of the need to process only a few large payments instead of numerous payments; (b) grantees’ responsibility for ensuring that subgrantees’ reimbursements are accurate would be reduced; (c) subgrantees’ cash flow would be improved early in the recovery process; and (d) reduction of state and local administrative efforts may be a basis for reducing administrative or management fees based on PW estimates.

Con: Automatic payments based on estimates would require a subgrantee to repay FEMA at project closeout for the amount of interval payments that exceeds actual costs on recovery

activities. This could place a burden on the subgrantee if it has inappropriately expended payments on non-recovery items.

Conclusion

The current PA process is a practical system in theory, yet its administrative requirements entail significant time and expense. Many of the grantees', subgrantees', and other interested parties' concerns could be addressed by implementing the recommendations and considerations proffered throughout this report. This is especially true for those who consider the current program design fundamentally sound, yet principally flawed as a result of inexperienced execution. Moreover, a more proactive approach by grantees in assuring the timeliness and accuracy of project worksheets—albeit not a focus of this report—would likewise improve the current system. Nevertheless, wholesale change may occur only through a shift in the current PA paradigm. Although there is no panacea for the inherent challenges derived from a multibillion-dollar program that provides assistance for communities to quickly respond to and recover from major disasters or emergencies, alternatives to the current system could improve the efficiency and economy with which FEMA delivers this assistance. The implementation of the alternatives presented herein—either on their own or in concert—could effect these improvements, and thus certainly warrant further FEMA and congressional analysis and consideration.

Recommendation

We recommend that the FEMA Administrator:

Recommendation #16: Prepare a detailed report that analyzes the costs and benefits of various alternatives to the current PA program, including those identified in this report, and provide an action plan for each of these alternatives or provide justification for why the alternatives are not viable.

Management Comments and OIG Analysis

FEMA generally concurred with Recommendations 16. Thus, we consider this recommendation resolved but open, pending review of corrective actions taken. Appendices B and C, respectively, contain the entirety of FEMA's management comments and the OIG's analysis of FEMA's comments to the draft report.

We audited FEMA’s PA program policies and procedures pursuant to a request from the U.S. House of Representatives Committee on Transportation and Infrastructure. The Committee noted that Members have raised concerns over FEMA’s implementation of the PA program, particularly regarding delays in project approval and reimbursement to state and local governments.

The objectives of our audit were to determine the efficacy of processes and procedures used to generate PWs—including the completeness, accuracy, and timeliness of the PWs—and identify alternatives to streamline the current PW process.

We interviewed more than 200 officials from: FEMA headquarters, two FEMA regional offices, two FEMA transitional recovery offices, one FEMA recovery office, and five state government offices responsible for developing and administering the PA program, as well as 14 local government entities that are PA program grant recipients. Our fieldwork was conducted in the District of Columbia and in California, Washington, Louisiana, Mississippi, and Florida. The fieldwork sites were judgmentally selected to include a broad, national selection of subgrantees with varying degrees of experience with FEMA’s PA program. Those states most affected by hurricanes Katrina and Rita—where FEMA obligated more than \$11 billion in PA grants—were included to assess the PA program for catastrophic events.

We researched federal laws, regulations, executive guidance, testimony, published reports, and other information related to FEMA’s PA program to establish criteria and obtain background information. We examined selected data from NEMIS, such as copies of PWs and related information, to observe matters such as clarity of scopes of work, as well as the timeliness of PW approvals.

We analyzed FEMA’s PA program data to determine: (1) the timeliness and management of data for appeals; (2) the timeliness and accuracy of PW determinations; (3) the effect that increasing the large project threshold would have on the classification of projects; and (4) the achievement of FEMA’s PA performance objectives regarding customer satisfaction, as well as timeliness of obligations and closeouts. We obtained data from the PA Appeals Database, NEMIS, Regional FEMA offices, and FEMA’s Disaster Assistance Directorate. Various data were unavailable or incomplete.

We conducted this performance audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards except as regards the *Alternatives to Streamline the PA Process* section, which is conceptual in nature. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained and used to develop the *Results of Audit* section provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B
FEMA Management Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20472



FEMA

OCT 16 2009

MEMORANDUM FOR: Matt Jadacki
Deputy Inspector General
Office of Emergency Management Oversight
Office of Inspector General

FROM: 
David J. Kaufman
Director
Office of Policy and Program Analysis

SUBJECT: Comments on OIG Draft Report, *Assessment of FEMA's Public Assistance Program Policies and Procedures*

Thank you for the opportunity to review and comment on the Office of Inspector General's (OIG's) subject draft audit report. As the Federal Emergency Management Agency (FEMA) works toward refining its programs, the OIG's independent analysis of program performance greatly benefits our ability to continuously improve our activities. Technical comments are being provided under separate cover.

FEMA has been diligently working to correct the issues identified in your audit. We submit the following comments concerning some of the audit's statements and findings:

- *FEMA takes excessive time to process appeals because it does not have: (1) complete timeliness standards for the appeals determination process; (2) a standardized system to track appeals; and (3) a mediation process for appeals that have reached impasse.*

Response: FEMA agrees with finding (2); there is not a standardized Agency-wide tracking system for all first and second level appeals. *Accordingly, FEMA will develop and implement such a system.*

FEMA disagrees with finding (1), and asserts that Title 44 Code of Federal Regulations, Section 206.206, **Appeals**, clearly and unambiguously identifies timeframes for responding to appeals.

FEMA disagrees with and believes finding (3) is fundamentally and logically flawed, as it appears to state that impasses can occur once the appeal process has been triggered by an applicant. That is simply and completely inaccurate, and appears to represent a flawed understanding of the appeals process. The appeals process is designed to authoritatively

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resolve field-level impasses; there is no opportunity for an impasse to occur once an applicant submits an appeal under the provisions of Title 44 CFR §206.206.

- *FEMA has no standards governing the amount of time its officials have to provide determinations on appeals for which they have requested more information.*

Response: FEMA strongly disagrees with this assertion. Title 44 CFR §206.206(c)(3) clearly and unambiguously establishes such timing standards. However, FEMA does acknowledge that a significant increase in the volume of appeals following Hurricane Katrina has challenged our ability to meet regulatory timeframes, and that we have not responded to all appeals within the 90-day timeframe.

- *We reviewed a sample of appeals that showed, on average, FEMA rendered a decision after about 7 months for first appeals, and after about 10 months for second appeals.*

Response: The numbers of appeals that FEMA has received since 2005 has substantially increased each year. FEMA thoroughly reviews the merits of each appeal. Unfortunately, this increase has left FEMA unable to respond to all appeals within the regulatory timeframe. FEMA recently hired two contractors, specifically to evaluate first- and second-level appeals. The contractors will help FEMA to evaluate appeals within the regulatory timeframes.

- *FEMA has no agency-wide system of tracking appeals from submission date to final determination. As a result, FEMA has no standardized means to identify delays for each appeal. This condition is compounded by incomplete record keeping on appeals.*

Response: FEMA concurs. While FEMA Headquarters and each FEMA Region maintain their own appeals tracking systems, there is no integrated, agency-wide appeals tracking system. *Accordingly, FEMA will develop and implement such a system.*

FEMA requests the OIG provide examples of incomplete record keeping, as well as advise on how many appeals and/or Regions were reviewed that showed evidence of incomplete record keeping. This will help us identify and address these issues.

- *Projects are also delayed while subgrantees await insurance proceeds.*

Response: FEMA acknowledges that delays in resolving insurance settlements may produce project delays. However, the resolution of insurance settlements is entirely and exclusively a legal matter between subgrantees and their insurance companies.

- *Subgrantees experience project delays and excessive administrative efforts because of FEMA's inconsistent determinations on project eligibility. FEMA often reverses course on previous decisions for scopes of work and estimated costs after working with subgrantees for months. This is the result of turnover throughout the PA process, which requires subgrantees to reeducate new FEMA project officers on the damages.*

Response: While FEMA agrees that some applicants have experienced inconsistent determinations, we challenge the basis for the OIG assertion that FEMA “often reverses course on previous decisions.” FEMA annually approves an average of 35,000 projects for 7,100 applicants. The OIG assertion that FEMA “often reverses course on previous decisions” appears to be based on interviews with only 14 of the approximately 7,100 applicants, or less than one fifth of one percent of applicants. Generalizing FEMA performance from such a remarkably small sample of applicants is statistically irresponsible.

FEMA employs multiple levels of reviews to ensure consistency in determining eligibility of projects. The project officer makes the initial recommendation and a Public Assistance Coordinator reviews the project officer’s recommendation. After FEMA enters a project worksheet into EMMIE, separate senior program staff conducts an initial and final eligibility review. FEMA continues to develop guidance documents and other tools to help our staff to be successful in implementing the Public Assistance Program. FEMA also provides a variety of training to keep all program staff up-to-date with program policies and procedures.

FEMA is aware that the effectiveness of the staff rotation process can be improved. FEMA will develop standard operating procedures during FY 2010 to address this issue.

FEMA believes that its current and ongoing initiatives will reduce the occurrence of inconsistent program determinations by different program staff.

- *FEMA officials often defer making project decisions – particularly those related to substantial cost overruns or scope changes – until closeout.*

Response: FEMA challenges the basis for the OIG assertion that FEMA officials “often defer making project decisions ... until closeout.” FEMA annually approves an average of 35,000 projects for 7,100 applicants. The OIG assertion of generalized frequency appears to be based on interviews with only 14 of the approximately 7,100 applicants, or less than one fifth of one percent of applicants. Generalizing FEMA performance from such a remarkably small sample of applicants is statistically irresponsible.

FEMA is aware that some applicants in California have raised this issue in the past, but is not aware that this has been an issue in other states. Grantees of the FEMA Public Assistance Program work in partnership with FEMA officials in the Joint Field Offices and Regional offices. As issues arise related to project scopes of work, or if significant cost overruns are anticipated, grantees are able to address those issues with FEMA at multiple points throughout grant administration prior to final closeout.

- *In addition, FEMA personnel do not have access to a clear and consolidated body of PA guidance that would facilitate their comprehension of the program.*

Response: FEMA has produced an extensive body of Public Assistance Program guidance documents including five handbooks, 56 policies, 11 fact sheets, and 15 standard operating procedures. These documents are available in printed form or electronically at a single location on the FEMA website.

- *FEMA's workforce generally lacks sufficient experience and training to perform the responsibilities of the PA program efficiently.*

Response: FEMA strongly rejects the generalized characterization of the Public Assistance workforce; and believes this statement is patently untrue. Accordingly, FEMA requests the specific data and analysis on which the OIG based this statement.

FEMA has a significant number of experienced and trained disaster reservists and technical assistance contractor staff with years of experience supporting the PA program. When FEMA needs surge staff to respond to large events, FEMA uses experienced and qualified technical specialists. Although experienced technical surge staff may be used to augment existing FEMA staff, as was the case following Hurricanes Katrina and Rita, these technical experts do need additional FEMA-specific training. FEMA trains new technical staff prior to deploying them, and provides follow-up training throughout the recovery operation. FEMA has received funding for training its disaster workforce in FY 2010. However, FEMA does not have funds to train technical assistance contractors when they are not deployed to a disaster.

- *For example, FEMA policy on debris removal is unclear and thus open to interpretation.*

Response: FEMA requests clarification on what specific aspect(s) of FEMA's policy on debris removal is unclear. FEMA has coordinated extensively with stakeholders to ensure that our policies are clear and consistently applied. FEMA has developed nine documents (policies, fact sheets, standard operating procedures and guides) on various aspects of debris. FEMA believes these documents clearly articulate our policy on debris. Nevertheless, FEMA will evaluate the possibility of combining all of these documents into one.

- *Sections Entitled: **Alternatives to Streamline the PA Process - Negotiate Settlements for All Projects and Negotiate Settlements for Permanent Categories of Work.***

Response: The Stafford Act authorizes funding to repair disaster-related damages. Delays in project funding result when FEMA and the applicant do not agree on an eligible scope of work. The possibility that FEMA and the applicant will not agree on an eligible scope of work in a timely manner still exists under this alternative. FEMA does not believe that this alternative will streamline the process unless Congress authorizes another basis for determining the grant amount.

- *Section Entitled: **Alternatives to Streamline the PA Process - Negotiate Settlements for Small Projects***

Response: 44 CFR §206.205, **Payment of claims**, authorizes FEMA to provide grants for small projects based on estimates. FEMA does not understand how this alternative differs from current regulations, and requests that the OIG elaborate.

- *Section Entitled: **Alternatives to Streamline the PA Process - Increase the Large Project Threshold***

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Response: FEMA believes this alternative would require legislative action.

- *Section Entitled: Alternatives to Streamline the PA Process - Replace Some Grants with Mission Assignments.*

Response: Under the National Response Framework, FEMA has the authority to direct other Federal agencies to perform work when the governor requests such assistance. The State and local governments are the first responders when a disaster occurs, and are responsible for the emergency work within their communities on behalf of their citizens. FEMA wants to strengthen states and local communities' capacities to respond to disasters, and stands ready to assist them when the governor requests assistance through the mission assignment process.

- *Section Entitled: Alternatives to Streamline the PA Process - Transfer Other Federal Disaster Programs to FEMA.*

Response: Under the National Response Framework, FEMA can direct any Federal agency to perform work, with or without reimbursement, when a governor requests such assistance. Other Federal agencies have established disaster programs and working relationships with state and local partners. FEMA has concerns about whether this alternative will streamline the Public Assistance or recovery process.

General comments regarding the descriptions of FEMA's Office of Environmental Planning and Historic Preservation (OEHP):

- The conclusions and recommendations made in this report pertaining to the Environmental and Historic Preservation (EHP) review process do not appear to be grounded on statistically significant data and adequate analysis. FEMA has looked for and has failed to identify the statistical methodology and analysis used in this report for the assessment of the EHP review process in Public Assistance projects. Unlike the analysis provided for the appeals processing time, the EHP review assessment only provides a brief assertion that "FEMA takes excessive time to conduct EHP reviews because it does not manage the process proactively." The only data provided is one example that lacks sufficient context (e.g., where, when, and what) to determine if this is an outlier or the norm.
- The assessment provided needs to start with a definition of what constitutes an "excessive time" or what is "timely" in the context of EHP reviews. It is critical to establish the metric that is the basis of the assessment. OEHP and the Program offices, for example, have developed and measured over the last two years performance metrics on the timeliness of the EHP reviews that are not captured anywhere within this report.
- Any assessment of the EHP review process and its timeliness should use the data collected by our systems (e.g., NEMIS, EMMIE, EMIS) in a manner that is transparent, reproducible, objective, and useful. Enterprise Data Warehouse technology, for example, could be used to do this and to broaden the scope of the "data capture" beyond

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California, Washington, Louisiana, District of Columbia, Mississippi, and Florida in an effort to capture statistical representation from all regions. This would provide a better picture of the issues and, consequently, improved recommendations that take into account the nationwide implementation of the EHP review process for Public Assistance.

Based on EHP performance metrics data, nationwide, the EHP review was completed **in less than 30 days for 91% of all Public Assistance projects** (Data collected from Data Warehouse from NEMIS and EMMIE for all disasters, in all 10 Regions for projects completing EHP review in 2007, 2008 and 2009 collectively).

- The report fails to link the EHP review issues to other Program Management area issues noted in other parts of the report, such as Deferral of Decisions, Project Worksheet versions (which may need EHP review each time), Scope of Work Clarity, and timely identification of Hazard Mitigation. All of these issues affect the EHP review process. The conclusions in these areas also seem to be summarily given without demonstrable data or analysis to back it up.
- One recommendation to make the information more productive and helpful would be to isolate some specific areas of types of projects that may be problematic (based on some criteria), in order to bring the issues into perspective and have more effective problem-solving and identification of solutions.
- Another recommendation would be to look at the outcomes of the EHP review process and their current ability to add value to Public Assistance Program's projects, minimize impacts of the Program to environmental and historic resources, and assist in effective and informed decision-making, one of the main purposes of the EHP compliance requirements.

With respect to the draft report's 16 recommendations, FEMA generally concurs with 13 of the recommendations and non-concurs with three of the recommendations. FEMA considers three of the recommendations closed and provides supporting documentation with this response. While corrective action plans will be provided in our 90-day response, we provide the following information at the present time:

Recommendation 1: Establish a set of standards for achieving timeliness in the appeals process, including timelines for providing determinations when additional information is requested from the subgrantee.

Response: Timelines for responding to appeals already exist in regulations (44 CFR Section 206.206). FEMA considers this recommendation closed.

Recommendation 2: Develop and implement a tracking system that records the status and timeliness of each appeal.

Response: FEMA concurs with this recommendation and will develop a standard appeals tracking system for Headquarters and the Regions.

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Recommendation 3: Establish a FEMA-wide mediation or arbitration process for appeals that have reached an impasse. Refer claims that have reached an impasse within FEMA's appeals system to the mediation or arbitration board.

Response: FEMA does not concur with the recommendation, which we believe is based on a fundamentally and logically flawed supposition, as it appears to state that impasses can occur once the appeal process has been triggered by an applicant. The appeals process does not present any opportunities for an impasse to occur. Once an issue is referred for appeal, the process will produce a determination.

FEMA is currently implementing an arbitration process as an option in lieu of the appeals process. The arbitration process was mandated by legislation for Hurricanes Katrina and Rita. FEMA will evaluate the arbitration process in the fourth quarter of FY 2010 to determine if it accelerates applicants' recovery and is appropriate to implement in other disasters.

Recommendation 4: Initiate and triage EHP reviews immediately after a disaster based on importance rather than sequence.

Response: This practice has been in place as part of EHP's standard operating procedures since the 1990s. In a disaster, FEMA EHP review is governed by several components' documents including nationwide EHP Standard Operating Procedures (SOP) for Incident Operations and disaster specific guidance developed in coordination with State and Federal resource agencies. In addition, the FEMA EHP Advisor may institute additional protocols depending on the nature and extent of the disaster and potential impacts on environmental and historic resources. As outlined in the EHP SOP, in the immediate aftermath of a disaster, EHP staff conduct scoping meetings to identify issues and specifically prioritize review of critical FEMA-funded activities, including debris removal, demolition, installation of temporary housing, and interim relocation of critical public facilities. A copy of the EHP SOP is attached. FEMA considers this recommendation closed.

Recommendation 5: Establish and enforce formal time limits for the EHP review process.

Response: FEMA does not concur with this recommendation. In any Joint Field Office, it is a paramount goal of FEMA's EHP management and staff to accelerate timeframes for compliance review and consultation with resource agencies. However, because EHP regulatory requirements under specific laws and agencies prescribe almost all such timeframes, further consultation with resource agencies is needed to reduce them further. This highlights the importance of negotiating the EHP programmatic approaches with resource agencies in anticipation of a disaster. Ultimately however, the time it takes to complete EHP review is influenced by many factors including the adequacy of the proposed scope of work (including the applicants' design of the project to avoid or minimize impacts), the discretion of the applicant to request an improved or alternate project, public interest in the project, and the ability to mitigate adverse impacts in accordance with Federal EHP requirements.

An FY 2011 OEHP priority is to develop and maintain national, regional and state streamlining initiatives, which will further streamline these timeframes. In addition, OEHP plans to add Deputy Regional Environmental positions to FEMA regional offices, which will provide another resource to execute these agreements pre-disaster.

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Recommendation 6: Coordinate EHP reviews through programmatic or similar agreements with other federal agencies and state entities involved in the review process.

Response: This recommendation has been carried out in FEMA since the 1990s. The assertion that FEMA “does not coordinate sufficiently, and establish pre-disaster agreements, with other federal agencies involved in the process” does not have merit or data analysis to back it up. As noted in the draft report, FEMA is required to determine sub-grantee compliance with applicable EHP laws, implementing regulations, and Executive Orders before Public Assistance funding is provided and work commences. FEMA’s management and staff devote considerable time and effort to anticipating EHP compliance issues in the aftermath of a disaster but before EHP review is actually triggered.

For over a decade, FEMA has relied on these agreements, typically negotiated before disaster strikes, to reduce its compliance workload by as much as 80%, especially for disaster assistance programs, as well as that of its resource agency counterparts, for a variety of EHP laws including the Endangered Species Act and the National Historic Preservation Act. Much of this streamlining allows program staff to clear projects without review, or requires very minimal compliance review. Samples of these agreements are attached. FEMA considers this recommendation closed.

Recommendation 7: Provide funding for projects that will later be recovered by insurance proceeds when the insurer and the insured (subgrantee) agree to subrogate all applicable funds to FEMA.

Response: FEMA will study the viability of this recommendation. Currently, there are no statutory prohibitions preventing the implementation of this recommendation. However, providing funds to applicants before they resolve claims with their insurance companies may provide an incentive for applicants to settle claims for a lower amount, or a disincentive for insurance companies to settle claims in a timely manner. While FEMA has concerns about this recommendation, FEMA will study the pros and cons of this recommendation to determine if it is appropriate to implement it in some circumstances.

Recommendation 8: Restructure FEMA’s disaster workforce into sufficiently staffed regional cadres and deploy personnel only to the geographic area in which they reside, unless nationwide deployment in response to a catastrophic disaster is necessary.

Response: FEMA concurs in part with this recommendation. FEMA is currently conducting disaster workforce studies to assess cadre-specific requirements and workforce needs throughout the agency. National and regional cadre managers, subject matter experts, and program officials are collaborating on this initiative. The results of these studies will determine whether the regional and/or Headquarters cadres are staffed sufficiently to meet the disaster specific workforce requirements based on activity. FEMA is seeking to identify staffing shortfalls and ensure its disaster workforce is properly credentialed to perform their duties. FEMA is not currently looking to restructure or reorganize its regional or national cadres.

The disaster workforce is typically deployed by Cadre Managers and program officials assigned to FEMA’s regional offices or field offices responsible for the specific disaster. Each region and/or Headquarters element responsible for the activation is responsible for identifying staffing needs, coordinating the drafting of Deployment Orders, and subsequent creation of deployment requests in

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the Agency's Automated Deployment Database (ADD) for the organization. The deployment process begins with a need for personnel based on the assessment of Staff Ordering Managers. This need is then articulated through a completed deployment order form, which is submitted to the Staffing Point of Contact (SPOC), who creates and submits a deployment request in ADD. Cadre Managers and program officials in FEMA regions typically attempt to deploy personnel within their respective region unless the workload exceeds their ability to effectively respond.

Recommendation 9: Develop a recruitment plan to target local candidates when long-term disaster recovery efforts will be needed.

Response: FEMA concurs with this recommendation. In August 2009, FEMA convened a series of focus groups to address staffing shortfalls and constraints before, during, and after a disaster. One area specifically identified for action was the local hiring process. FEMA is currently developing a standard operating procedure for local hiring that will direct field personnel on how to efficiently hire staff locally (i.e., identify, security clear, and hire) to augment Disaster Assistance Employees (DAE) for longer-term PA operations. FEMA plans to complete the standard operating procedure in early 2010.

Recommendation 10: Require that project officers, consistent with their overall responsibilities as outlined in federal regulations and FEMA guidance: (a) document all project activity; (b) convey all relevant documentation and information from predecessor to successor; and (c) review all appropriate documentation prior to visiting the subgrantee.

Response: FEMA concurs with this recommendation. Existing guidance requires staff to document major project activity in the Case Management File. FEMA will hold managers accountable for ensuring that staff does so. FEMA is developing a standard operating procedure for staff (Public Assistance Group Supervisor, Public Assistance Coordinator Crew Leader, and Project Officer) transition to ensure that all relevant documentation and information are effectively transferred to successor staff. FEMA plans to complete the draft standard operating procedures by December 31, 2009.

Recommendation 11: Expedite the development and implementation of a standardized credentialing system to include employee qualifications, training, mentoring, and other applicable information.

Response: FEMA concurs with this recommendation. In 2007, FEMA conducted a working group with pertinent stakeholders to obtain insight on how best to implement a PA Credentialing Plan. The primary goal was to identify credentialing requirements for every position within PA. The secondary goal was to universally agree upon a *simplified, easily administered* method for credentialing each position within the PA Program. The working group agreed on credentialing requirements that included training, mentoring, and experience. In 2008, FEMA designed and developed a software application to administer the Credentialing Plan in real-time nationally. In 2009, FEMA piloted the plan and software. FEMA is currently working to ensure credentialing elements meet Agency-mandated requirements and plans to implement the Public Assistance credentialing system in 2010.

Appendix B

FEMA Management Comments to the Draft Report

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Recommendation 12: Expedite the completion and dissemination of the FEMA *Public Assistance Operations Manual*, and make it available online and in print to all disaster personnel.

Response: FEMA concurs with this recommendation and plans to complete the *Public Assistance Operations Manual* by the end of the second quarter FY 2010.

Recommendation 13: Use a weighted methodology to assess timeliness of PA funding obligations that will not statistically conceal major shortfalls on larger disasters.

Response: FEMA concurs with this recommendation. FEMA values transparency and will investigate how best to account for different size disasters when reporting obligation information.

Recommendation 14: Devise and implement a mechanism to measure the timeliness of PA project closeouts for those disasters not included in EMMIE and revise PA performance objective “close 90% of disasters within 2 years of the declaration date” to differentiate according to disaster magnitude.

Response: FEMA concurs with this recommendation.

Recommendation 15: Conduct PA program customer satisfaction surveys, and revise PA performance objective “achieve at least 90% customer satisfaction rating” to differentiate between subgrantee funding amounts.

Response: FEMA does not concur with the recommendation to have different customer satisfaction performance standards for different sized disasters. The customer satisfaction standard should be the same for all disasters. We should not have lower expectations for larger disasters.

Recommendation 16: Prepare a detailed report that analyzes the costs and benefits of various alternatives to the current PA program, including those identified in this report, and provide an action plan for each of these alternatives or provide justification for why the alternatives are not viable.

Response: FEMA concurs in part with this recommendation. FEMA continues to evaluate alternatives to streamline the implementation of the Public Assistance Program. Many of the recommendations enumerated herein will be considered and potentially incorporated into the development of streamlining alternatives. FEMA will continue to keep the DHS OIG informed of such alternatives, to include associated analyses of the costs and benefits of administrative options, timelines, and action plans.

Thank you again for the opportunity to comment on this draft report and we look forward to working with you on other issues as we both strive to improve FEMA.

Attachments

The Federal Emergency Management Agency (FEMA) generally concurred with the majority of the recommendations presented in this report. Our analysis of FEMA's comments to the draft report and our position on the six recommendations which we consider unresolved are provided below.

The fundamental purpose of our assessment was to determine the efficacy of FEMA's Public Assistance program and to identify alternatives to streamline the process. We accomplished this task, in part, through identifying and exploring challenges within the program as described by grantee and subgrantee officials whom we interviewed. This assessment, however, was not—nor ever was purported to be—a scientific, statistical analysis of every facet of the PA program. The breadth of our objectives precluded such an undertaking. FEMA, nevertheless, has expressed concern that we generalized findings based on interviews with a limited number of subgrantees in relation to the multiplicity of subgrantees with whom we did not interview. Although we never made generalizations on the ubiquity of any particular issue, our audit disclosed recurrent issues among the subgrantees that we interviewed, suggesting that the occurrences were not uncommon and not simply anecdotal. Therefore, we maintain that FEMA should determine the frequency of program shortfalls—particularly those recurrent issues raised by the subgrantees that we interviewed, and take appropriate corrective action as recommended. The expediting of customer satisfaction surveys by FEMA, previously restricted by Office of Management and Budget requirements, should be useful in this process.

Below, we provide specific comments on the three recommendations that FEMA believes should be closed (Recommendations 1, 4, and 6) as well as the three recommendations with which FEMA did not concur (Recommendations 3, 5, and 15). We disagree with FEMA's position in all such instances and have clarified the recommendations and/or the related findings with additional detail. We consider the remainder of the recommendations in this report resolved but open pending evaluation of corrective actions taken by FEMA.

Recommendation #1: We recommended that FEMA establish a complete set of standards for achieving timeliness in the appeals process. FEMA considered this recommendation closed, stating that timelines for responding to appeals already exist in regulations. Although timelines are established for various phases of the appeal process, we do not concur that timelines are specified for all aspects of the process. For example, FEMA's regulations do not specify timeline requirements on appeals while waiting to receive additional information from an independent technical

expert whom FEMA has requested to analyze the subject matter, or from the subgrantee. The absence of timelines for any phase of the process may result in a protracted period of time before a final determination is reached. Thus, timeliness is not ensured. Our recommendation seeks to ensure efficiency within the appeals process—a critical quality that the majority of the subgrantees with whom we interviewed did not believe to be present.

Recommendation #3: We recommended that FEMA establish an Agency-wide mediation or arbitration process for appeals that have reached an impasse. FEMA did not concur with this recommendation, stating that the appeals process does not present any opportunities for an impasse to occur. We used *impasse* to denote a significant delay in the appeals process, and our data showed that there were indeed significant delays—sometimes several years.

We agree with FEMA's comments that once filed, an appeal decision will ultimately be rendered. Our recommendation was intended to ensure that appeals with significant delays be referred to a mediation or arbitration process for prompt resolution. Our finding alludes to FEMA's Appeals Arbitration Panel available to the Gulf Coast states as an example of how to move projects forward. We agree that FEMA's arbitration process is being implemented as an alternative to the appeals process. However, independent arbitration only became necessary after FEMA and subgrantees failed to come to agreement -- years after the Gulf Coast hurricanes -- on work eligibility. Since project worksheets had not been finalized and funding obligated, there was no opportunity for subgrantees to file an appeal since no appealable administrative action had been taken by FEMA.

Subgrantee officials whom we interviewed suggested an arbitration or mediation option due to extended delays in obtaining appeal determinations from FEMA. If timeframes were established for grantees and subgrantees to submit additional information when requested by FEMA, and appeal determinations were made within a complete set of timeframe standards (as we suggested in Recommendation #1), arbitration may not be required. However, when extended delays occur, an independent arbitration panel would put scope of work and funding issues to rest and recovery work could then proceed.

In response to this recommendation, FEMA said it intends to evaluate the arbitration process in the fourth quarter of FY 2010 to

determine if it accelerates applicants' recovery and is appropriate to implement in other disasters. As it evaluates the arbitration process and reassesses its position on Recommendation #1, FEMA should consider whether arbitration is appropriate when appeal determinations are not made in a timely manner.

Recommendation #4: We recommended that FEMA initiate and triage Environmental and Historic Preservation (EHP) workload, based on importance and not necessarily sequence, immediately following a disaster. FEMA considered this recommendation closed, stating that this practice has been in place as part of EHP's Standard Operating Procedures (SOP) since the 1990s. FEMA commented that based on its review of PA projects for disasters in all 10 Regions, EHP reviews were completed in less than 30 days for 91% of the projects. While this statistic is noteworthy, it includes those projects that are subject to the statutory or categorical exclusions authorized by 44 CFR, Part 10 – *Environmental Considerations*. Our assessment of PA-related activities was not a scientific, statistical analysis and was based on those projects requiring extensive EHP reviews or assessments which are most likely part of the 9% that required in excess of 30 days to complete.

Our recommendation was based, in part, on the narrow window for performing work near the habitat of certain species for which only a few months of each year would not be endangering to them, and various construction windows. Thus, it is critical that these projects are identified quickly, and prioritized, to take advantage of the limited timeframe. From the responses received from the subgrantees, we are not confident that the SOP addresses all of these issues, or that FEMA employees are familiar with the SOP to properly implement it. It is important to note that we specifically recommended that FEMA initiate and triage the EHP process, and did not make any recommendations regarding FEMA's SOP. As such, in addition to our initial—action-oriented, not policy-oriented, recommendation—we suggest that FEMA consider clarifying the SOP, as well as providing increased training to its EHP employees to ensure compliance.

Recommendation #5: We recommended that FEMA establish and enforce formal time limits for the EHP process. FEMA did not concur with this recommendation, stating that although it is the goal of FEMA to accelerate EHP timeframes, the process is influenced by too many factors to prescribe additional deadlines. Although a variety of factors could reasonably create delays to the

EHP process, we believe that procedures must be implemented to prevent excessive delays, such as those that subgrantees have experienced. Presently, there is nothing to prevent the EHP process from spanning years, and it is not uncommon for that to occur. While FEMA did not concur with the recommendation, officials commented that in FY 2011, priority will be given to developing and maintaining national, regional, and state streamlining initiatives which will further streamline EHP timeframes. Additionally, FEMA intends to add deputy regional environmental positions within each of its regions to provide another resource to execute the pre-disaster agreements we discussed in Recommendation #6. FEMA should continue to be proactive in this area by streamlining the EHP process as early as possible, including establishing and enforcing formal time limits to ensure subgrantee response and recovery efforts are not significantly delayed due to EHP shortfalls.

Recommendation #6: We recommended that FEMA coordinate the EHP process through programmatic or similar pre-disaster agreements with other federal agencies and state entities involved in the process. FEMA considered this recommendation closed, stating that this course of action has been employed since the 1990s. We find it disconcerting that FEMA has had this option available to them for many years, and supported its use, yet subgrantees commented on the lack of, and need for, these very arrangements. For example, subgrantee officials said that FEMA will not accept state reviews, and that improved cooperation and communication among the different agencies is needed. Thus, in addition to our initial recommendation, we also suggest increased training for FEMA employees in establishing and implementing such agreements, as well as increased dissemination of programmatic agreement concepts to all relevant parties.

Recommendation #15: We recommended that FEMA conduct PA program customer satisfaction surveys and revise the PA performance objective “achieve at least 90% customer satisfaction rating,” to differentiate between subgrantee funding amounts. FEMA did not concur with this recommendation, stating that customer satisfaction standards should be the same for all disasters. We believe that FEMA did not understand this recommendation, particularly because FEMA concurred with our preceding and intrinsically similar recommendations regarding performance measurement. Therefore, to clarify, we are not recommending that FEMA employ different customer satisfaction standards for disasters of greater magnitude but, rather, use a weighted

methodology in determining customer satisfaction across all disasters. We believe, for example, that if FEMA (according to its customers) adequately responds to nine small-scale disasters, but inadequately responds to one catastrophic disaster that requires greater efforts, FEMA's customer satisfaction ratings should not reflect a 90% overall satisfaction rating. By doing so, ratings would be misleading and would obscure customer dissatisfaction on large-scale disasters. Thus, we reiterate our recommendation that FEMA revise its performance objective so that the customer satisfaction ratings on large-scale disasters will be transparent.

Appendix D
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