

Department of Homeland Security **Office of Inspector General**

Direct Administrative Costs Paid for FEMA Public
Assistance Grant Funds



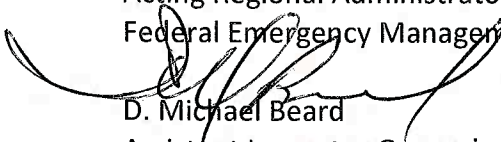


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

AUG 27 2012

MEMORANDUM FOR: George A. Robinson
Acting Regional Administrator, Region VI
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *Direct Administrative Costs Paid for
FEMA Public Assistance Grant Funds
Audit Report DD-12-19*

Attached for your action is our final report, *Direct Administrative Costs Paid for FEMA Public Assistance Grant Funds*. We incorporated the formal comments from FEMA Region VI in the final report.

The report contains three recommendations aimed at identifying measures that the Federal Emergency Management Agency (FEMA) can take to enhance the overall effectiveness of the Public Assistance program. You responded to the draft report stating that you concur with Recommendations #2 and #3 and provided acceptable action plans, but did not provide target completion dates. You stated that you disagree with Recommendation #1; however, you provided an acceptable alternative action plan and a target completion date for your planned actions.

Within 90 days of the date of this memorandum, please provide our office with target completion dates for Recommendations #2 and #3. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, Recommendation #1 will be considered open and resolved. Recommendations #2 and #3 will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Significant contributors to this report are Tonda L. Hadley, Director, Central Regional Office; Paige Hamrick, Audit Manager; James Mitchell, Senior Program Analyst; and Tai Cheung, Program Analyst.

Please call me at (202) 254-4100 with any questions, or your staff may contact Tonda L. Hadley, Director Central Region Office, at (214) 436-5200.

Attachment



Background

We are currently auditing \$63.2 million of FEMA Public Assistance (PA) funds awarded to Cameron Parish, Louisiana (Cameron) (Public Assistance Identification Number 023-99023-00).¹ The Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, awarded the funds to Cameron for disaster recovery work related to Hurricane Rita, which occurred in September 2005.

At the conclusion of our audit, we plan to issue our complete audit report, including any additional findings and recommendations. However, the purpose of this report is to advise you of an issue that requires your immediate attention regarding \$45.5 million in direct administrative costs (DAC) that FEMA Region VI has obligated for subgrantees that received PA awards for disasters declared before November 13, 2007.

Results of Audit

FEMA inappropriately authorized the retroactive application of laws, regulations, and policies regarding DAC for subgrantees that became eligible for disasters declared *after* November 13, 2007. As a result, FEMA Region VI has obligated a total of \$45.5 million for DAC for all PA grants pursuant to two Louisiana disasters declared before November 13, 2007.² Before that date, FEMA used a sliding-scale administrative allowance to cover all direct and indirect costs associated with managing and administering subgrants under the PA program (44 CFR 207.9(b)). Therefore, we question \$45.5 million because any costs claimed beyond the administrative allowance for this purpose are ineligible, duplicate costs. Appendix D presents the criteria we used for this report.

Cameron's Public Assistance Award Provides an Example of the Problems With the Retroactive Application of Direct Administrative Costs

Included in the \$45.5 million was \$4.6 million of DAC that FEMA obligated for Cameron's PA award. Of the \$4.6 million FEMA obligated for DAC, Cameron had claimed \$4.2 million as of October 19, 2011. Because Cameron has not yet completed many large projects, we expect Cameron's claim for DAC to increase. Therefore, in this report, we use the obligated amount of \$4.6 million except where we specifically refer to the claimed amount. FEMA not only obligated \$4.6 million in DAC, but also obligated \$373,689 for the sliding-scale administrative allowance that was supposed to be

¹ As of October 2011, Cameron had claimed \$77.2 million in disaster costs, which FEMA had reduced by \$14 million in insurance adjustments.

² Hurricane Katrina (1603-DR-LA) was declared August 29, 2005; Hurricane Rita (1607-DR-LA) was declared September 24, 2005.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

available for Cameron's projects because the disaster occurred before November 2007. To determine whether other pre-November 2007 disaster subgrantees were claiming ineligible DAC, we reviewed data stored in FEMA's Enterprise Data Warehouse (EDW).³ According to EDW, FEMA Region VI had obligated \$45.5 million for DAC charged to projects for Louisiana subgrantees receiving PA for disasters that occurred from August 28, 2005, through November 12, 2007. However, other FEMA regions obligated virtually no other DAC for these older disasters.⁴

Additional Problems With Direct Administrative Costs for Cameron Parish

Although we have not determined the full effect of FEMA's retroactive application of the laws, regulations, and policies applicable to DAC, we found significant problems with the DAC Cameron claimed that go beyond the DAC eligibility rules applicable to disasters declared both *before and after* November 13, 2007. These problems indicate that FEMA Region VI and GOHSEP, as a grantee, need to establish policies and procedures to provide guidance on how the DAC should be applied. Specifically, the problems we identified relate to the requirements of applicable cost principles.⁵ Those cost principles require that, to be allowable under Federal awards, costs must be necessary and reasonable for the proper and efficient performance and administration of Federal awards and must be supported by adequate documentation. Further, FEMA has not provided guidance to its own employees or to the grantee and subgrantees as to what amount of DAC is reasonable relative to the total costs of a project. FEMA officials said that the agency is developing guidelines for implementing and determining cost reasonableness for retroactive application of DAC.

Cameron's claimed costs included unreasonable DAC for some projects relative to other project costs, unreasonable amounts of time charged to certain tasks, and unreasonable rates paid to high-level personnel for low-level tasks. Also, Cameron did not always maintain adequate documentation to support DAC claimed.

In April 2008, Cameron procured the services of a consultant to assist with the administration and management of its projects. Cameron claimed the costs for this

³ We collected these data as of three different dates during our audit: Cameron claimed \$4.2 million of the \$4.6 million in DAC as of October 19, 2011; the EDW data were current as of December 15, 2011; and FEMA had obligated the \$373,689 administrative allowance as of March 22, 2012.

⁴ Appendix A, Objectives, Scope and Methodology, provides a detailed description of all DAC recorded in EDW for the older disasters.

⁵ *Cost Principles for State, Local and Indian Tribal Governments* are at 2 CFR 225 (Office of Management and Budget (OMB) Circular A-87, Revised); *Cost Principles for Educational Institutions* are at 2 CFR 220 (OMB Circular A-21, Revised); and *Cost Principles for Non-Profit Organizations* are at 2 CFR 230 (OMB Circular A-122, Revised).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

consultant on a project-by-project basis; however, FEMA consolidated the \$4.6 million administrative costs for all of Cameron's 301 projects under two projects: (1) Project 4726 (\$3.5 million) for costs incurred before February 26, 2010; and (2) Project 4737 (\$1.1 million) for costs incurred after that date. The project worksheet attachments for these two projects list the individual amounts of DAC applicable to each of the 301 projects.

We obtained a list of the 301 projects in Cameron's award and reviewed the amount of DAC originally claimed for each project. We also judgmentally selected 28 projects with DAC totaling \$1.7 million of the \$4.2 million claimed.⁶ For the 28 projects, we reviewed supporting documentation for time charged by the consultant to determine whether tasks performed were similar to or duplicative of those allowed under the administrative allowance, and whether the title of the employee was appropriate for the task performed. Based on our review, we have the following concerns:

- The DAC often appeared unreasonable relative to the total amount of the projects:
 - Cameron's \$63.2 million award included \$4.6 million in DAC, or 7.8 percent of the total \$58.6 million awarded for other costs.
 - DAC for individual projects ranged from 0 to 1,041 percent of other project costs.
- Cameron's claim included \$827,191 (4,718 hours) on the DAC task to provide additional documentation to FEMA and GOHSEP for PW4636 (Project Management). The contractor hired for project management was the same contractor performing DAC tasks.
- The consultant's supporting timesheets for DAC contained descriptions of tasks that were broad and clearly not chargeable to specific projects, such as "prepare detailed project files and maintain files" and "documentation requests."
- The time spent and the level of employees completing certain tasks may not be reasonable. For example, an associate engineer billed at \$128.52 per hour recorded 44 hours to one project for "program funding request documentation." This type of task appears more suited to clerical staff billed at much lower rates.
- The consultant billed, and Cameron claimed, DAC for projects completed before Cameron hired the consultant. Cameron officials said that they directed the consultant to re-review completed projects. This seems unnecessary. FEMA

⁶ We based our selection of the 28 projects mainly on large dollar values of DAC, but we also included smaller projects to obtain a mix of large and small projects.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

officials noted that re-review of completed projects may have been necessary, depending on the tasks, to prepare for closeout.

- Cameron’s claim included an additional \$103,860 misclassified as project management costs that were administrative in nature, because the costs were for activities such as preparing and maintaining files.

We are also concerned that FEMA has not provided guidance to its own employees or to the grantee and subgrantees as to what amount of DAC is reasonable relative to the total costs of a project. We asked a FEMA Region VI official for examples of any guidance that FEMA had provided on determining the reasonableness of DAC. He said that he was not aware of any official guidance on determining the reasonableness of *actual* DAC claimed. However, FEMA had provided draft guidance on *estimating and obligating* DAC for uncompleted projects. FEMA noted that staff did seek approval from their headquarters to use the draft guide as an estimating tool. Also, FEMA noted that final large project DAC would be based on actual, reasonable costs and any adjustments to small project DAC estimates would require “small project netting” and be reviewed for reasonableness. This guidance, *Reasonable Direct Administrative Costs*, recommends estimating specific amounts of total DAC for projects of varying amounts (see appendix C). For example, total DAC is estimated at—

- \$141 for projects ranging from \$1,000 to \$5,000 (2.82 percent to 14.10 percent),
- \$1,312 for projects ranging from \$100,001 to \$250,000 (0.52 percent to 1.31 percent), and
- \$5,000 for projects over \$1 million (0.50 percent or less).

We applied the recommended amounts to Cameron’s 301 projects. Based on this guidance, if the projects had been uncompleted at the time, FEMA would have estimated total DAC at \$325,446, or 0.56 percent of Cameron’s \$58.6 million awarded for non-DAC projects (\$63.2 million less \$4.6 million in DAC). The \$325,446 estimated according to this sliding scale is about 7 percent, or 1/14th of the \$4.6 million that FEMA obligated for DAC on Cameron’s projects.

FEMA obligates PA funds based on the amount of costs estimated for projects. Therefore, it should attempt to estimate costs that reasonably mirror actual costs. If FEMA believes that the amounts of estimated DAC listed in its own guidance are reasonable, it should publish similar guidance for establishing maximum amounts of actual DAC allowable for various project amounts.



Conclusion

The sliding-scale administrative allowance covers all direct and indirect costs associated with managing and administering subgrants under the PA program for all disasters declared before November 13, 2007. Therefore, we question \$45,549,564 that FEMA Region VI obligated for DAC to subgrantees for disasters declared before November 13, 2007, because these costs are ineligible, duplicate costs already covered by the sliding-scale administrative allowance that the subgrantees received.

In addition, the problems we found with Cameron's DAC seem to indicate that FEMA and GOHSEP, as the grantee, do not have adequate policies and procedures in place to administer the DAC obligations. As a result, FEMA Region VI personnel involved in the administration of PA grants need training to understand cost principles applicable to direct and indirect costs incurred under Federal grants. FEMA should also establish guidelines to assist its personnel and grantees in recognizing unreasonable or unnecessary DAC and in establishing limits to the DAC allowable for various project amounts.

We met with FEMA Region VI officials on January 24, 2012, and discussed DAC for older disasters (those declared before November 13, 2007). These officials said that they retroactively applied the rules regarding DAC effective for disasters declared *after* November 13, 2007, to the older disasters at the direction of FEMA headquarters.

We disagree that FEMA can retroactively apply the regulations on DAC. The *Disaster Mitigation Act of 2000* (Public Law 106-390) (DMA 2000) specifically stated that, until FEMA published the regulations to establish management cost rates, the expense percentages in section 406(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. §5121, et.seq., would apply to management costs.⁷ These expense percentages and the costs they cover are clearly set out in 44 CFR 207.9, as discussed in appendix D. Further, FEMA Region VI is the only FEMA Regional Office that is allowing subgrantees from older disasters to claim DAC. If FEMA headquarters believes that disasters that occurred before November 2007 should be eligible for DAC, we question why only 1 of its 10 regions is engaged in this practice.

⁷ Although the Law states the President is to determine management rates, Sections 4-201 and 4-203 of Executive Order 12148, July 20, 1979 (44 FR 43239), transferred this responsibility from the President to the Director of FEMA.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendations

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation #1:

Disallow \$45,549,564 in ineligible, duplicate direct administrative costs obligated for disasters that occurred before November 13, 2007.

Recommendation #2:

Provide training to FEMA Region VI personnel involved in the administration of public assistance grants to ensure that they understand cost principles applicable to direct and indirect costs incurred under Federal grants.

Recommendation #3:

Establish guidelines to assist its personnel and grantees in recognizing direct administrative costs that are unreasonable or unnecessary and in establishing maximum limits to the amount of direct administrative costs allowable for various project amounts.

Management Comments and OIG Analysis

We discussed the results of our audit with FEMA officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA officials and discussed it at an exit conference held with them on April 19, 2012.

On July 13, 2012, FEMA provided us a written response, which appears in its entirety as appendix B. Below, we summarize and analyze FEMA's comments on each of our recommendations.

In its response, FEMA stated that it disagreed with Recommendation #1, and asserted that under the Stafford Act it has some discretion to reimburse DAC in addition to the sliding scale, subject to certain conditions. Consistent with that assertion, FEMA issued a policy on June 12, 2012, that provided an incentive for subgrantees to close out projects under disasters for Hurricanes Katrina and Rita by August 29, 2013. This incentive will allow direct costs for grant management up to 3 percent of eligible project costs. The costs must be applied on a project-by-project basis, and eligible activity costs must clearly be attributed to an eligible project. FEMA also stated that costs incurred to



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

provide documentation for direct management cost claims, or to establish tracking systems, are not eligible for reimbursement.

FEMA officials stated that, by September 30, 2012, FEMA will review and reconcile project worksheets prepared for DAC, and deobligate costs that exceed established limits or that lack sufficient documentation. As authority for providing this incentive, FEMA cited section 638(f) of the *Post Katrina Emergency Management Reform Act of 2006*, as amended, which directs the Administrator to “provide incentives for the timely closeout of PA projects under sections 406 and 407 of the [Stafford Act]” and establish recovery offices in the states of Mississippi, Louisiana, Alabama and Texas to effectuate the delivery of assistance to those affected by Hurricane Katrina and Hurricane Rita.

Although FEMA’s response stated that it disagreed with this recommendation, it also stated that FEMA agrees that paying DAC in excess of the sliding scale for any other disasters is improper. Therefore, we consider FEMA’s action plan acceptable and consider the recommendation to be open and resolved.

FEMA concurred with Recommendation #2 and commented that Region VI will coordinate with headquarters to develop training on cost principles applicable to direct and indirect costs incurred within the PA program. However, FEMA did not provide a target completion date for its planned actions; therefore, we consider the recommendation to be open and unresolved until we receive a target completion date.

FEMA concurred with Recommendation #3 and commented that Region VI will work with headquarters to develop further guidelines on determining reasonable and appropriate reimbursement of DAC. However, FEMA did not provide a target completion date for its planned actions; therefore, we consider the recommendation to be open and unresolved until we receive a target completion date.



Appendix A

Objectives, Scope, and Methodology

The 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.

Our overall objective for the audit of Cameron Parish is to determine whether Cameron accounted for and expended FEMA PA funds according to Federal regulations and FEMA guidelines.

We are conducting our audit of Cameron Parish pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

For this report, we interviewed FEMA Region VI officials; reviewed all costs charged to cost code 9901 from FEMA's EDW⁸ as of December 15, 2011, and for all FEMA regions for disasters that occurred from August 28, 2005, through November 12, 2007;⁹ and performed other procedures considered necessary to ensure the accuracy and reliability of our findings and conclusions. The costs from EDW totaled \$49.1 million (454 projects) and included costs obligated by FEMA Regions I, VI, VII, and IX. We reviewed the detailed costs for \$48.2 million charged on 73 projects (98 percent of the DAC charged). Our detailed review included the following:

⁸ FEMA launched EDW in 2005 to enable FEMA decision makers to query and retrieve data in a number of FEMA data systems, including National Emergency Management Information System (NEMIS) and Emergency Management Mission Integration Environment (EMMIE).

⁹ FEMA's Disaster Assistance Policy 9525.9, *Section 324 Management Costs and Direct Administrative Costs*, section VII.D.6.b, instructs personnel involved in the administration of the PA program to enter DAC for subgrantees in the project costs under cost code 9901. FEMA operates 10 regions; FEMA Region VI is responsible for FEMA grant and subgrant activities in Texas, Louisiana, New Mexico, Arkansas, and Oklahoma.



Appendix A (continued)

Objectives, Scope and Methodology

- Projects for Louisiana subgrantees with DAC charged greater than \$10,000 (32 projects totaling \$48 million);
- Projects outside of Region VI (7 projects totaling \$136,439); and
- Projects for Louisiana subgrantees that appeared to contain anomalies (29 projects totaling \$80,198).

Of the \$136,000 charged to subgrantees outside the State of Louisiana, we initially determined that all but \$40,800 was not DAC, but rather other types of costs erroneously charged or immaterial amounts. We questioned the \$40,800 in a separate report addressed to FEMA Region VII.¹⁰ Region VII responded that the \$40,800 was miscoded as DAC; therefore, the entire \$136,439 outside Region VI was not DAC. We also determined that \$3.4 million of obligated funds for Louisiana subgrantees was miscoded and was not DAC. The remaining DAC of \$45.5 million applied solely to Louisiana in FEMA Region VI.

¹⁰ Report Number DD-12-09, *FEMA Region VII Direct Administrative Costs Estimated for Harrison County, Missouri*, issued April 11, 2012. On May 11, 2012, Region VII responded to our report stating that the questioned costs of \$40,800 were not DAC and that the region incorrectly recorded the costs using the 9901 code for DAC.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix B
Management Comments to the Draft Letter Report

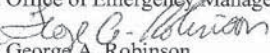
U.S. Department of Homeland Security
Region VI
800 N. Loop 288
Denton, TX 76209-3698



FEMA

July 13, 2012

MEMORANDUM FOR: D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

FROM: 
George A. Robinson
Acting Regional Administrator
FEMA Region 6

SUBJECT: Direct Administrative Costs Paid for FEMA Public Assistance
Grant Funds, Audit Report DD 12-XX

FEMA has received the Department of Homeland Security Office of Inspector General's (OIG) May 30, 2012 draft report, DD 12-XX, Direct Administrative Costs (DAC) paid for FEMA Public Assistance Grant Funds.¹ The OIG requested FEMA's comments on the draft report and specific responses to each recommendation for inclusion in the OIG's final report. This memorandum provides FEMA's comments.

Background

The OIG is currently auditing public assistance funds awarded to Cameron Parish, Louisiana, by the Louisiana Governor's Office of Homeland Security (GOHSEP), a FEMA grantee, for disaster recovery work related to Hurricane Rita. While performing the Cameron Parish audit, the OIG determined that FEMA Region 6 has obligated approximately \$45.5 million in DAC for subgrantees for disasters declared between August 28, 2005, and November 13, 2007. This amount includes \$4.6 million obligated for DAC for Cameron Parish, in addition to \$373,689 which was obligated for the sliding scale administrative allowance authorized under Stafford Act section 406(f)² and 44 CFR 206.228(a)(2)(ii).

The OIG concluded that FEMA Region 6 inappropriately applied the law, regulations and policies applicable to disasters declared *after* November 13, 2007, retroactively to Cameron Parish and other subgrantees for disasters declared *before* November 13, 2007, primarily Hurricanes Katrina and Rita.³

¹ Direct Administrative Costs are costs that the grantee or subgrantee incurs that can be separately identified and assigned to a specific project. See 44 C.F.R. § 207.6(e); FEMA Disaster Assistance Policy 9525.9, *Section 324 Management Costs and Direct Administrative Costs*, VII, A. 5.

² 42 U.S.C. § 5172(f)(2).

³ DD 12-XX Direct Administrative Costs, p.3.



Appendix B (continued) Management Comments to the Draft Letter Report

Direct Administrative Costs Paid for FEMA Public Assistance Grant Funds
July 13, 2012
Page 2

The OIG found that FEMA had not instructed its employees or grantees and subgrantees on the proper application of DAC in accordance with the cost principles applicable to federal grant awards.⁴ The report also stated that Cameron Parish's DAC costs appear to be unreasonable, inadequately supported, and misclassified.

The OIG has not completed its audit of Cameron Parish but issued this draft report to address:

- the eligibility of DAC, in addition to the sliding scale, for disasters declared prior to November 13, 2007; and
- guidance and training for FEMA employees, grantees, and subgrantees on the proper application of DAC in accordance with the cost principles applicable to federal grants.

Discussion

Section 406(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act⁵ (Stafford Act), authorized reimbursement of Public Assistance subgrantee "associated expenses" for requesting, obtaining, and administering Federal assistance based on a formula or "sliding scale" specified in the law.⁶

The operative legal standard for Public Assistance subgrantee "associated expenses" for requesting, obtaining, and administering Federal assistance resulting from Hurricanes Katrina and Rita is set forth at 44 CFR 207.9. This regulation applies to all disasters declared prior to November 13, 2007.

The costs to administer and manage grants received from the Public Assistance program fall into one of two categories: direct or indirect costs. According to 44 CFR 207.9, for direct costs, subgrantees are to be reimbursed "based on" a sliding scale published in the regulation. That sliding scale mirrors the sliding scale contained in section 406(f)(1) of the Stafford Act. For subgrantee indirect costs, the regulation in paragraph 44 CFR 207.9 (c)(2) clearly states: "[n]o indirect costs of a subgrantee are separately eligible because the percentage allowed in paragraph (b)(2) of this section covers necessary costs of requesting, obtaining and administering Federal assistance."

The intention of section 207.9 was to provide a definition of eligible direct costs, and limit subgrantees' eligibility for these costs to the percentage allowance. That said, the language

⁴ The Cost Principles for State, Local and Indian Tribal Governments are located at 2 C.F.R. Part 225; Cost Principles for Educational Institutions are located at 2 C.F.R. Part 220; and Cost Principles for Non-Profit Organizations are located at 2 C.F.R. Part 230.

⁵ Pursuant to section 202 of the Disaster Mitigation Act of 2000, until the date on which FEMA established the management cost rates under section 324 of the Stafford Act by regulation, FEMA was required to utilize section 406(f)(1) of the Stafford Act to establish management cost rates to reimburse any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project. P.L. 106-390, 114 Stat. 1560.

⁶ 42 U.S.C. § 5172(f).



Appendix B (continued) Management Comments to the Draft Letter Report

Direct Administrative Costs Paid for FEMA Public Assistance Grant Funds
July 13, 2012
Page 3

“[t]he grantee may provide funds to the subgrantee . . . based on the following percentages,” provides FEMA some discretion to authorize additional funds based on other factors. Moreover, while the regulation explicitly provides that no indirect costs of a subgrantee are separately eligible, it does not contain similar restrictive language with respect to direct costs. As a result, the regulation provides FEMA some discretion to reimburse additional *direct* management costs in excess of what is provided in the sliding scale in subsection (b)(2).

Although FEMA has the discretionary authority to interpret section 207.9 in this manner, such an open ended application would make direct administrative costs eligible for every disaster declared before November 13, 2007. Such an outcome would be contrary to the original intention of the regulation, administratively challenging, and potentially result in a significant drain on the Disaster Relief Fund. As such, FEMA declines such a broad and general application of its regulation.

That said, section 638(f) of the Post-Katrina Emergency Management Reform Act (PKEMRA)⁷ authorizes the Administrator to open recovery offices in Mississippi, Louisiana, Alabama and Texas to effectuate the delivery of assistance to those affected by Hurricane Katrina and Hurricane Rita. The section further directs the Administrator to “provide incentives for the timely closeout of public assistance projects under sections 406 and 407 of the [Stafford Act].”⁸

FEMA intends, with appropriate limitations, to reimburse for additional direct administrative costs, outside of the percentage allowance provided for in 44 CFR 207.9, to incentivize closeout of 406 and/or 407 projects where appropriate in Mississippi, Louisiana, Alabama and Texas, for Hurricane Katrina and Hurricane Rita. Furthermore, due to the geographic and disaster specific limitations of FEMA’s authority under section 638, as well as the intended result of expedited closeout, FEMA finds that this incentive program will not provide open-ended access to the Disaster Relief Fund.

Recommendation 1: Disallow \$45,549,564 in ineligible, duplicate direct administrative costs obligated for disasters that occurred before November 13, 2007.

FEMA disagrees with this recommendation.

FEMA agrees that for any disasters other than LA-1603, MS-1604, AL-1605, TX-1606, and LA-1607 declared before November 13, 2007, any obligation of direct administrative costs in excess of the sliding scale for disasters is improper.

However, by letter dated June 12, 2012, (attached) FEMA provided detailed guidance to the Louisiana GOHSEP⁹ describing the conditions under which subgrantees may claim up to three percent of their approved, eligible, documented, direct costs for grant management activities - in addition to the sliding scale - as an incentive to close out PA projects under Stafford Act sections

⁷ Public Law 109-295 (October 4, 2006).

⁸ *Id.*

⁹ Similar letters were also sent to the States of Mississippi, Alabama, and Texas.



Appendix B (continued) Management Comments to the Draft Letter Report

Direct Administrative Costs Paid for FEMA Public Assistance Grant Funds
July 13, 2012
Page 4

406 and 407 for Hurricanes Katrina and Rita. For these disasters, DAC in addition to the sliding scale is eligible, subject to certain conditions.

The closeout incentive will be applied on a project by project basis. To be eligible for this incentive, the project must be complete and submitted for final project certification approval by August 29, 2013.

In addition to the sliding scale, projects qualifying for the incentive may receive DAC in an amount up to three percent of their approved, eligible project costs. DAC charged to the sliding scale may not also be charged under the closeout incentive. All costs must be for an eligible scope of work, documented, reasonable, and clearly attributed to a specific project. All costs must be for grant management costs eligible under Uniform Federal Grant regulations, FEMA regulation and policy. The line item for the activity in the project worksheet must be for a clearly eligible task and show that something was produced. The descriptions of tasks must be specific and clearly chargeable to a project, and all costs must have adequate documentation. Undocumented costs are not eligible. Finally, the records must clearly attribute the eligible activity cost to an eligible project. If they do not, the cost will be treated as an indirect management cost, which is limited to the sliding scale.

Costs incurred to provide documentation in support of direct management cost claims, or to establish tracking systems, are not eligible for reimbursement.

All management costs for Hurricane Katrina will expire on August 29, 2013, pursuant to 44 CFR 207.9(d). As provided in subparagraph 44 CFR 207.9(d)(3), grantees may submit a request for an extension to the period of availability.

FEMA provides this limited and conditional exception to the provisions of 44 CFR 207.9 under the extraordinary authority contained in section 638 of PKEMRA to incentivize the rapid closeout of PA projects and thereby further the recovery efforts from Hurricanes Katrina and Rita. For all other emergencies or disasters declared before November 13, 2007, the payment of costs to subgrantees is limited to the percentages stated in 44 CFR 207.9(b)(2).

The terms of the incentive program do not apply to projects that, as of June 12, 2012, are subject to either an Arbitration Agreement, Settlement Agreement, Civilian Board of Contract Appeals Decision, or single settlement agreement pursuant to special legislation, that establishes either the total costs that the grant cannot exceed, or a date by which the project must be completed. For those projects, FEMA is either contractually obligated to reimburse the costs previously established, or the date of completion is already set thereby negating any benefit of a closeout incentive.

FEMA will review and reconcile project worksheets prepared for DAC, including but not limited to Cameron Parish, in accordance with its June 12, 2012, letter. Costs that are in excess of the limits established, or lack sufficient documentation will be deobligated. FEMA's initial focus will be on those project worksheets prepared on behalf of Cameron Parish. FEMA will complete this analysis and provide results to the OIG by September 30, 2012.



Appendix B (continued)

Management Comments to the Draft Letter Report

Direct Administrative Costs Paid for FEMA Public Assistance Grant Funds
July 13, 2012
Page 5

Recommendation 2: Provide training to FEMA Region VI personnel involved in the administration of public assistance grants to ensure they understand cost principles applicable to direct and indirect costs incurred under Federal grants.

FEMA concurs with this recommendation

FEMA Region 6 will coordinate with FEMA Headquarters and assist in developing, within the agency's current plans for Public Assistance training, information concerning cost principles applicable to direct and indirect costs incurred within the Public Assistance Program.

Recommendation 3: Establish guidelines to assist its personnel and grantees in recognizing direct administrative costs that are unreasonable or unnecessary and in establishing maximum limits to the amount of direct administrative cost allowable for various project amounts.

FEMA concurs with this recommendation

FEMA Region 6 will work with FEMA Headquarters to develop further guidelines that may delineate that which would be considered reasonable and appropriate in the reimbursement of DAC.

Thank you for the opportunity to provide FEMA's comments and responses to this draft report.



Appendix C FEMA Guidance on Estimating Direct Administrative Costs

DRAFT

Reasonable Direct Administrative Costs

Per FEMA-HQ, this table may be used in declarations made on or after March 12, 2008,
but **ONLY** under the *conditions set forth below

ESTIMATED VALUES OF SUBGRANTEE DIRECT ADMINISTRATIVE COSTS (SDAC)

Pursuant to DAP 9525.9, dated March 12, 2008, page 7 of 8

Total Eligible Value of PW	Administrative Cost			Total
	Labor (Salary and Benefits)	Travel	Supplies and Equipment	
\$1,000 - \$5,000	\$111	\$18	\$12	\$141
\$5,001 - \$15,000	\$238	\$25	\$21	\$284
\$15,001 - \$25,000	\$430	\$32	\$27	\$489
\$25,001 - \$50,000	\$498	\$45	\$35	\$578
\$50,001 - \$80,900	\$571	\$62	\$39	\$672
\$80,901 - \$100,000	\$700	\$100	\$50	\$850
\$100,001 - \$250,000	\$1,081	\$154	\$77	\$1,312
\$250,001 - \$500,000	\$2,192	\$308	\$154	\$2,654
\$500,001 - \$750,000	\$3,088	\$441	\$221	\$3,750
\$750,001 - \$1,000,000	\$3,963	\$566	\$283	\$4,812
> \$1,000,000	\$4,118	\$588	\$294	\$5,000

***CONDITIONS FOR USE**

1. These values shall only be used for projects that are **NOT** complete.
2. Large projects (> \$80,900) will be reconciled to actual cost at closeout.
3. If applicant elects to submit a small project appeal, ALL small projects will be based on actual costs (actual cost for admin will be part of the netting process).

DRAFT

If the applicant is requesting Direct Administrative Costs, the following statement is used:

(DATE) THE SUBGRANTEE IS REQUESTING DIRECT ADMINISTRATIVE COSTS THAT ARE DIRECTLY CHARGEABLE TO THIS SPECIFIC PROJECT. ASSOCIATED ELIGIBLE WORK IS RELATED TO ADMINISTRATION OF THE PA PROJECT ONLY AND IN ACCORDANCE WITH 44 CFR 13.22. THESE COSTS ARE TREATED CONSISTENTLY AND UNIFORMLY AS DIRECT COSTS IN ALL FEDERAL AWARDS AND OTHER SUBGRANTEE ACTIVITIES AND ARE NOT INCLUDED IN ANY APPROVED INDIRECT COST RATES. (Project Specialist's Name)

If the applicant does not choose to utilize Direct Administrative Costs, the following statement is input on the PW:

(DATE) THE SUBGRANTEE CHOSE NOT TO CLAIM ANY DIRECT ADMINISTRATIVE COSTS FOR THIS PROJECT. (Project Specialist's Name)

Add a line item in either case using 9901 - Direct Administrative Costs (Subgrantee) as the cost code. Use 0 quantity and .01 for the cost when NOT claiming Direct Administrative Costs.

Apply local rates, NOT national contractor costs.



Appendix D

Criteria Used for this Report

Disaster Mitigation Act of 2000

DMA 2000 amended the Stafford Act by adding Section 324, *Management Costs*. According to that section, FEMA was to publicize regulations to establish management cost rates and, until FEMA published these regulations, the expense percentages in section 406(f) of the Stafford Act would apply to management costs. On October 11, 2007, FEMA published the *Management Costs* interim rule (*Federal Register*, 72 FR 57869) that established the management cost rates for emergencies and major disasters. The rule went into effect on November 13, 2007, and was implemented at 44 CFR 206, *Federal Disaster Assistance*, and 44 CFR 207, *Management Costs*.

Disasters declared on or after November 13, 2007

FEMA's interim rule simplified the determination of management and administrative costs allowable for grantees and subgrantees by defining such costs as direct or indirect, and eliminating the sliding-scale administrative allowance described in section 406(f) of the Stafford Act. FEMA's Disaster Assistance Policy 9525.9, *Section 324 Management Costs and Direct Administrative Costs*, applicable to all major disasters and emergencies declared on or after November 13, 2007, includes the following definitions and provisions:

- *Direct Administrative Costs* are costs the grantee or subgrantee incurs that can be identified separately and assigned to a specific project (44 CFR 207.6(c)). FEMA will reimburse direct administrative costs incurred by grantees and subgrantees that are properly documented and directly chargeable on a project worksheet (PW) for a specific project. Actual costs must be reasonable for the work performed and accounted for according to 44 CFR 13.22 – *Allowable Costs* (44 CFR 207.6(a) and (c)).



Appendix D (continued)

Criteria Used for this Report

- *Management Costs* are any indirect costs, administrative expenses, and any other expenses that a grantee or subgrantee reasonably incurs in administering and managing the PA grant that are not directly chargeable to a specific project (44 CFR 207.2). Only grantees are eligible to apply to FEMA for section 324 management costs. FEMA will reimburse section 324 management costs in an amount not to exceed 3.34 percent of the Federal share of projected eligible program costs, not including direct Federal assistance, for major disaster declarations and 3.90 percent of the Federal share of projected eligible program costs, not including direct Federal assistance, for emergency declarations.
- *Pass-through funds* are the percentage or amount of management costs that the grantee determines it will make available to subgrantees (44 CFR 206.207(b)(1)(iii)(K)).

In summary, for major disasters and emergencies declared on or after November 13, 2007, (1) grantees and subgrantees may request reimbursement for reasonable DAC that are properly documented and chargeable to a specific project; and (2) only grantees are eligible to apply for management costs that are not directly chargeable to a specific project, but the grantee may pass through a contribution from its flat percentage toward the subgrantee's indirect costs for managing and administering projects.

Disasters declared before November 13, 2007

As stated previously, FEMA's interim rule went into effect on November 13, 2007, and was implemented at 44 CFR 206, *Federal Disaster Assistance*, and 44 CFR 207, *Management Costs*. The regulation contains a specific section (207.9) that "describes how FEMA provides administrative and management cost funding for PA and HMGP for major disasters or emergencies declared before November 17, 2007." According to 44 CFR 207.9, for declarations before November 13, 2007, grantees and subgrantees receive reimbursement for their direct and indirect costs of managing and administering disaster assistance funds in the same manner as before DMA 2000.



Appendix D (continued)

Criteria Used for this Report

For older disasters declared before November 13, 2007, grantees still receive State management administrative costs, indirect costs, and the sliding-scale administrative allowance; and subgrantees still receive only the sliding-scale administrative allowance to cover both direct and indirect costs for managing and administering disaster funds received under subgrants.



Appendix E

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