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Public Assistance Program Interim Guidance on 2 C.F.R. Part 200

- I. **TITLE:** Interim Guidance to implement the provisions of 2 C.F.R. Part 200 for the Public Assistance (PA) Program.
- II. **DATE OF ISSUANCE:** December 26, 2014
- III. **PURPOSE:** This document provides interim guidance to implement provisions of the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," found at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. Part 3002, through 79 FR 75871 for PA awards. This interim guidance is not exhaustive; and States, local governments, Indian tribal governments, or nonprofit organizations are subject to all provisions in 2 C.F.R. Part 200.
- IV. **SCOPE AND EXTERNAL AUDIENCE:** This interim guidance applies to all PA awards authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and made under emergency or major disaster declarations declared on or after December 26, 2014. PA program guidance, FEMA-322, *Public Assistance Guide*; FEMA-321, *Public Assistance Policy Digest*, 9500 series policies, Public Assistance Standard Operating Procedures, and any other PA guidance materials ("PA Program Guidance") that is in conflict with this interim guidance is superseded for applicable PA grant awards. States, local governments, Indian tribal governments, or nonprofit organizations receiving an applicable PA award must comply with the requirements of 2 C.F.R. Part 200, 44 C.F.R. Part 206, and PA Program Guidance, except to the extent the PA Program Guidance conflicts with this interim guidance.
- V. **AUTHORITY:** 42 U.S.C. § 5121 et seq.; 2 C.F.R. Part 200; and 44 C.F.R. Part 206.
- VI. **GUIDANCE DETAILS:** On December 26, 2014, DHS adopted, in its entirety, 2 C.F.R. Part 200 through 79 FR 75871, which supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in OMB guidance, including 2 C.F.R. Parts 215, 220, 225, and 230); OMB Circulars A-89, A-102, and A-133; and the guidance in OMB Circular A-50 on Single Audit Act follow-up. At the same time, FEMA removed Part 13 from Title 44 of the Code of Federal Regulations. These superseded OMB Circulars and guidance, including 44 C.F.R. Part



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13, will continue to apply to Federal awards made under emergency or major disaster declarations declared prior to December 26, 2014.

VII. INTERIM GUIDANCE

A. Definitions:

The following definitions are adapted from 2 C.F.R. Part 200 to reflect PA program authorities, and are used throughout this interim guidance. The definitions include terminology changes to existing PA Program Guidance. The definitions found in this document are applicable to the administration of FEMA assistance, in addition to those definitions found at 2 C.F.R. Part 200.

1. Closeout: Closeout means the process by which FEMA or the pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in 2 C.F.R. § 200.343 and this interim guidance.
2. Federal award: The federal award is the federal financial assistance that a non-Federal entity receives directly from FEMA or indirectly from a pass-through entity.
3. Non-Federal entity: A non-Federal entity is a state, local government, Indian tribal government, or nonprofit organization that carries out a Federal award as a recipient or subrecipient. See Section B of this interim guidance for cross-reference to PA Program terminology.
4. Pass-through entity: A pass-through entity is a state or Indian tribal government that provides a subaward to a subrecipient to carry out an activity under the PA Program. See Section B of this interim guidance for cross-reference to PA Program terminology.
5. Period of performance: The period of performance is the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.



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6. Recipient: A recipient is a state or Indian tribal government that receives a Federal award directly from FEMA to carry out an activity under the PA Program. A pass-through entity can also be a recipient. A recipient cannot be a subrecipient. See Section B of this interim guidance for cross-reference to PA Program terminology.
7. State: Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
8. Subaward: A subaward is an award provided by a pass-through entity to a subrecipient, for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not mean payments to a contractor or payments to an individual that is a beneficiary of a Federal program. In the PA Program each Project Worksheet carried out by a subrecipient is a subaward. See Section B of this interim guidance for cross-reference to PA Program terminology.
9. Subrecipient: A subrecipient is a non-Federal entity that receives a subaward from a pass-through entity to carry out an activity under the PA program. The term subrecipient does not include an individual that is a beneficiary of the Federal program. See Section B of this interim guidance for cross-reference to PA Program terminology.

B. Terminology References

Unless stated otherwise in this interim guidance, the following terminology references in PA Program regulations, policy and guidance and as defined in 44 C.F.R §206.201 must be read in conjunction with the corresponding definition in 2 C.F.R. Part 200 and this interim guidance. All grantees, subgrantees, and applicants, as previously identified in PA Program regulations, policy and guidance, must comply with the relevant requirements prescribed throughout 2 C.F.R. Part 200 as described below. For more information on terminology changes see Appendix I.



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1. Applicant: All references to an *applicant* in PA Program regulations, policy and guidance are subject to the requirements of a *subrecipient*, as defined in 2 C.F.R. § 200.93 and this interim guidance, with respect to funds an *applicant* receives from a state or Indian tribal government to carry out activities funded by the PA Program.
2. Subgrant: All references to *subgrant* in existing PA Program regulations, policy and guidance are subject to the requirements of a *subaward*, as defined in 2 C.F.R. § 200.92 and this interim guidance; and to the requirements of *federal awards*, as defined in 2 C.F.R. Part 200 and this interim guidance, with respect to funds a *subgrantee* receives from a pass-through entity.
3. Subgrantee: All references to *subgrantee* in existing PA Program regulations, policy and guidance are subject to the requirements of a *subrecipient*, as defined in 2 C.F.R. § 200.93 and this interim guidance; and to the requirements of *non-federal entities*, as defined in 2 C.F.R. § 200.69 and this interim guidance. Grant: All references to *grant* in existing PA Program regulations, policy and guidance are subject to requirements of a *federal award*, as defined in 2 C.F.R. Part 200 and this interim guidance.
5. Grantee: All references to *grantee* in existing PA Program regulations, policy, and guidance are subject to the requirements of a *recipient*, as defined in 2 C.F.R. § 200.86; to the requirements of a *non-federal entity*, as defined in 2 C.F.R. § 200.69 and this interim guidance; and to the requirements of a *pass-through entity*, as defined in 2 C.F.R. § 200.74 and this interim guidance, with respect to the *grantee's* role in administering the award to *subgrantees*. References to *grantee* may include requirements of both a *recipient* and/or *pass-through entity*, depending on whether the *grantee* is administering a *subgrant*.

C. General Provisions

1. Conflict of Interest - 2 C.F.R. § 200.112

To eliminate and reduce the impact of conflicts of interest in the subaward process, recipients must follow their own policies and procedures regarding the elimination or reduction of conflicts of interest when making subawards.



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Recipients are also required to follow any applicable State, local or tribal statutes or regulations governing conflicts of interest in the making of subawards.

The recipient must disclose to FEMA in writing, any real or potential conflict of interest, as defined by the Federal, state, local, or tribal statutes or regulations or their own existing policies that may arise during the administration of the federal award. Recipients must disclose any real or potential conflicts to the FEMA regional office within 30 days of learning of the conflict of interest. Similarly, subrecipients must disclose any real or potential conflict of interest to the pass-through entity as required by the recipient's conflict of interest policies, or any applicable State, local, or tribal statutes or regulations.

Conflicts of interest may arise during the process of FEMA making a Federal award in situations where an employee, officer, or agent, any members of his or her immediate family, or his or her partner has a close personal relationship, a business relationship, or a professional relationship, with an applicant, recipient, subrecipient, or FEMA employees.

For conflict of interest requirements for procurement under grant awards, all non-Federal entities must follow the requirements under the procurement regulations found at 2 C.F.R. §§ 200.317-200.326.

2. *Mandatory disclosures* - 2 C.F.R. § 200.113

A recipient or applicant for a Federal award must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity potentially affecting the Federal award committed by a Governor's Authorized Representative (GAR), Alternate GAR, or other personnel directly involved with the Federal award. Such disclosure shall be submitted in writing no later than 30 days after confirmation that such a violation occurred, to the appropriate FEMA regional office.

Similarly, a subrecipient or applicant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity potentially affecting the



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Federal award committed by personnel directly involved with the Federal award in writing, within 30 days to the pass-through entity.

D. Post Federal Award Requirements

1. *Period of Performance*- 2 C.F.R. § 200.309

A non-Federal entity may charge to the Federal award only allowable costs incurred during the *period of performance* and any approved pre-award costs incurred before FEMA or the pass-through entity made the award.

Federal awards to pass-through entities and recipients and subawards to subrecipients are generally subject to separate periods of performance.

The period of performance for the federal award to the pass-through entity or recipient is the full duration of the major disaster or emergency declaration for that pass-through entity or recipient, to include the performance and closeout of all subawards. The period of performance will begin on the first day of the incident period and will initially extend four years from the date of declaration, with the ability for FEMA to extend, as appropriate. The recipients are expected to complete all physical work and obligate program funds. Although such a timeframe is established up front, this does not mean that the recipient cannot close the grant early if projects are complete before the end of the period of performance.

Subaward periods of performance are established in conjunction with 44 C.F.R. §206.204(c). All subaward periods of performance begin on the first day of the incident period. Emergency work and debris clearance periods of performance end 6 months after the date of the declaration. Permanent work periods of performance end 18 months after the date of the declaration. Pursuant to 44 C.F.R. §206.204(c)(2), the recipient or pass-through entity may impose lesser deadlines if appropriate, or based upon extenuating circumstances or unusual project requirements, extend the deadlines for an additional 6 months for debris clearance and emergency work and an additional 30 months for permanent work subawards. For extensions beyond those timeframes, the



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recipient or pass-through entity shall submit a request to the Regional Administrator, including the information required by 44 C.F.R. §206.204(d).

Individual projects carried out by a recipient (i.e. not through a subaward) are subject to the completion deadlines established in 44 C.F.R. §206.204(c).

2. *Equipment* - 2 C.F.R. § 200.313

The non-Federal entity obtains title to equipment acquired under the award and is subject to the conditions outlined in 2 C.F.R. § 200.313, including to:

- (1) Use the equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.
- (2) Not encumber the property without approval of FEMA
- (3) Use and dispose of the property in accordance with 2 C.F.R. § 200.313.

Generally, the non-Federal entity must dispose of equipment or supplies in one of the following ways:

- (A) Retain, sell, or otherwise dispose of, if the equipment or supplies has a current per unit fair market value of \$5,000 or less, with no further obligation to FEMA.
- (B) Retain, sell, or transfer the title to the Federal Government or to an eligible third party, if the equipment or supplies has a current per-unit fair-market value in excess of \$5,000. In this case, FEMA is entitled to the Federal share of the current market value or proceeds from sale.

Equipment acquired through a PA grant award must be used consistent with the eligibility requirements of the PA Program.

3. *Supplies* - 2 C.F.R. § 200.314

FEMA retains an interest in any unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the PA project or program if they are not needed for any other Federal award. The non-Federal entity



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must compensate FEMA for its share of the supplies in compliance with 2 C.F.R. §§ 200.313 & 200.314 as described in Section VII. D.2. *Equipment*.

As long as FEMA retains an interest in supplies, the non-Federal entity must not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services.

4. *Procurement Standards*

When procuring property and services under a Federal award, a state recipient or subrecipient must follow the same policies and procedures it uses for procurements from its non-Federal funds and the requirements outlined in 2 C.F.R. § 200.317.

All other recipients and subrecipients that are not a State, will follow 2 C.F.R. §§ 200.318- § 200.326.

Private Non-Profits (PNP), that were previously subject to the procurement requirements located at 2 C.F.R. Part 215, are also subject to the procurement requirements located at 2 C.F.R. §§ 200.318 – 200.326. These requirements may differ from previous requirements and the impacted non-Federal entity should familiarize itself with these requirements.

5. *Requirements for Pass-Through Entities*- 2 C.F.R. § 200.331

Pass-through entities have additional responsibilities when administering subawards, many of which are highlighted in this interim guidance and listed below. This interim guidance does not provide an exhaustive list and pass-through entities must adhere to all of the requirements in 2 C.F.R. Part 200.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes information required in 2 C.F.R. § 200.331.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in 2 C.F.R. § 200.331.



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- (c) Consider imposing specific subaward conditions upon a subrecipient, if appropriate, and notify subrecipient, as described in 2 C.F.R. § 200.207.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include the requirement found in 2 C.F.R. § 200.331.
- (e) Verify that every subrecipient is audited as required by 2 C.F.R. Subpart F— Audit Requirements when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. § 200.501.
- (f) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (g) Consider taking enforcement action against noncompliant subrecipients as described in 2 C.F.R. § 200.338.

6. *Remedies for Noncompliance - 2 C.F.R. § 200.338*

FEMA may apply specific conditions, as outlined in 2 C.F.R. § 200.207, if it is necessary to address a risk posed by an applicant or recipient, including, but not limited to, an applicant's history of failing to comply with the terms of a Federal award or failure to meet expected performance goals. These specific conditions may include, but are not limited to, requiring technical or management assistance, additional financial reports and project monitoring, and payments as reimbursements rather than advance payments.

If FEMA determines that imposing specific conditions is not or will not remedy the noncompliance, FEMA may take one or more of the following actions, as described in 2 C.F.R. § 200.338 :

- (a) Temporarily withholding cash payments
- (b) Disallowing costs
- (c) Wholly or partially suspending or terminating the award
- (d) Suspension or debarment proceedings



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- (e) Withholding further Federal awards for the project or program
- (f) Any other remedies legally available.

The pass-through entity may similarly impose specific conditions or remedies for noncompliance as described in this section.

7. *Termination - 2 C.F.R. § 200.339*

The Federal Award may be terminated in whole or in part:

- (a) By FEMA or the pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- (b) By FEMA or the pass-through entity for cause;
- (c) By FEMA or the pass-through entity with the consent of the recipients or subrecipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
- (d) By the recipient or subrecipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if FEMA or the pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, FEMA or pass-through entity may terminate the Federal award in its entirety.

The pass-through entity must provide to the subrecipient a notice of termination.

8. *Opportunities to Object, Hearings and Appeals - 2 C.F.R. § 200.341*

Upon FEMA's imposition of any remedy for non-compliance, the recipient or subrecipient may provide information and documentation challenging the suspension or termination to the appropriate FEMA Regional Administrator within 60 days of receipt of a notice of the action that is being appealed in accordance with 44 CFR § 206.206. The recipient or subrecipient may also elect to challenge FEMA's remedy through FEMA's Dispute Resolution Pilot



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Program as described at 44 CFR § 206.210 if the remedy results in an amount in dispute greater than \$1.015 million.

9. *Closeout and Retention Requirements for Records - 2 C.F.R § 200.343*

FEMA will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. The recipient, or pass-through entity if there is a subaward, must submit the following reports and any additional reports required in the FEMA – State agreement:

- a) Final Federal Financial Report (FFR), SF-425, 90 days from the PA award performance period expiration date.
- b) A final performance/progress report 90 days from the PA award performance period expiration date.
- c) As required in PA Program guidance, a final reconciliation report 90 days from the date the recipient or a subrecipient completes all administrative and project work for each large project.

The pass-through entity will close out each subaward when it determines that all applicable administrative actions and all required work of the subaward have been completed by the subrecipient and no later than 90 days from the end of the period of performance as described in section VII. D. 1.

10. *Records Retention - 2 C.F.R. § 200.333*

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report.

When the non-Federal entity is notified in writing by FEMA, the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period, non-Federal entities must keep records for as long as indicated in the notification, which



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may be longer than three years.

FEMA or pass-through entity retains the right to disallow costs and recover funds on the basis of a later audit or other review after closeout.

E. Cost Principles and Audit Requirements

All non-Federal entities are required to comply with the Cost Principles and Audit Requirements as outlined in 2 C.F.R. Part 200.

VIII. RESPONSIBLE OFFICE: Recovery Directorate, Public Assistance Division

IX. SUPERSESSION: This interim guidance supersedes any conflicting provisions in PA Program guidance and related documents on this subject for PA awards authorized by the Stafford Act and made under emergency or major disaster declarations issued on or after December 26, 2014.

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2 CFR Part 200 Terminology

