

Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work



Federal Emergency Management Agency
Department of Homeland Security
500 C Street, S.W.
Washington, DC 20472

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PART I. OVERVIEW

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2). This law amends Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act). Specifically, the law adds section 428, which authorizes alternative procedures for the Public Assistance (PA) Program under sections 403(a)(3)(A), 406, 407 and 502(a)(5) of the Stafford Act. It also authorizes the Federal Emergency Management Agency (FEMA) to implement the alternative procedures through a pilot program. The program will remain in place until FEMA promulgates and adopts revised regulations that reflect the program changes the law authorizes.

The law identifies these goals for the procedures:

- Reducing the costs to the Federal Government of providing Public Assistance.
- Increasing flexibility in the administration of such assistance.
- Expediting the provision of assistance to a State, tribal or local government, or nonprofit owner or operator of a private nonprofit facility.
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

PA Program Features Included in the Alternative Procedures

The alternative procedures authorized under the law pertain to debris removal (emergency work) and repair, restoration, and replacement of disaster-damaged public and private nonprofit facilities (permanent work). This guide outlines the alternative procedures for permanent work only.

Alternative Procedures for Permanent Work

For permanent work, the law:

- Allows for making grants for permanent work projects on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion of work if the State, tribal, or local government, or owner or operator of the private nonprofit facility agrees to be responsible for actual costs that exceed the estimate.
- Provides an option for State, tribal, or local government, or owner or operator of the private nonprofit facility to receive an in-lieu contribution, without reduction, on the basis of estimates for repair, restoration, reconstruction, or replacement of a public facility and management expenses (i.e., eliminates the penalty for alternate projects under sections 406(c)(1)&(2) of the Stafford Act).

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- Allows for consolidating, as determined by the Administrator, the facilities of a State, tribal, or local government, or owner or operator of the private nonprofit facility as a single project based upon estimates adopted under the procedures.
 - Allows for the Administrator to permit a Grantee or Subgrantee to use all or part of the excess grant funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster and other activities to improve future Public Assistance operations or planning.
 - Requires the Administrator to make available an independent expert panel to validate the estimated eligible cost if requested by a Subgrantee, and where the Administrator or certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5 million.
 - Requires the Administrator, at an applicant's request, to consider properly conducted and certified cost estimates prepared by professional licensed engineers (mutually agreed upon by the Administrator and the applicant).

A. Applicability

In accordance with the law, State, tribal, and local governments and the owners and operators of certain private nonprofit facilities (Subgrantees) may participate in the alternative procedures. Participation in the pilot program and use of the alternative procedures for specific subgrants (or projects) is voluntary. If Subgrantees use any alternative procedures, they will sign an acknowledgement regarding these procedures, which FEMA will attach to the Subgrant Application (also known as a Project Worksheet) for the subgrants(s) in question. (A sample acknowledgement is provided in the Appendix.)

The pilot program is effective for any major disaster or emergency declared on or after the issuance of this guide. FEMA may also approve subgrants using the alternative procedures for major disasters or emergencies declared before this guide is issued if construction has not begun. The alternative procedures apply retroactively (major disasters declared before the guide is issued) only to permanent work subgrants.

The alternative procedures contained in this document are only for large projects.¹

B. Compliance With Applicable Laws, Regulations, and Policies

The law authorizes FEMA to waive notice of rulemaking procedures that would otherwise be required for the PA Program alternative procedures. Accordingly, FEMA has developed this document to provide the framework for implementing the alternative procedures as a pilot

¹ A large project is a subgrant with a total estimated cost that exceeds the monetary threshold established in section 422 of the Stafford Act and 44 CFR §206.203(c). For major disasters and emergencies declared in Fiscal Year 2013, the threshold is \$67,500.

program and to establish acceptable requirements for those elements of existing regulations excepted by the provisions of the law. The guidance document addresses exceptions to regulations in 44 CFR §206.203(c)(1), §206.204(e), §206.206, and §206.253(a).

Subgrantees participating in this pilot program must abide by the elements of this document for applicable components of the PA Program; and FEMA will approve subgrants to which the alternative procedures apply in accordance with the guide. However, all other statutory, regulatory, and policy requirements of the PA Program apply and are not affected by the alternative procedures. The alternative procedures also do not affect requirements for compliance with other Federal requirements, including environmental and historic preservation (EHP) laws, regulations, and executive orders.

C. Purpose of the Guidance Document

This document provides guidance to FEMA, Grantees, and Subgrantees for implementing the alternative procedures for permanent work. It describes the scope and limitations of the alternative procedures; describes changes to the aspects of the PA Program to which these procedures apply; identifies responsibilities for certain activities; and identifies timelines for key actions and decisions. It does not describe steps for all processes the alternative procedures affect. Where appropriate, FEMA may develop additional guidance and tools for implementation. FEMA may also revise this guidance to clarify or improve the procedures and address lessons learned.

The guidance document pertains only to procedures authorized under the law. FEMA, Grantees, and Subgrantees will implement all other aspects of the PA Program in accordance with standard procedures.

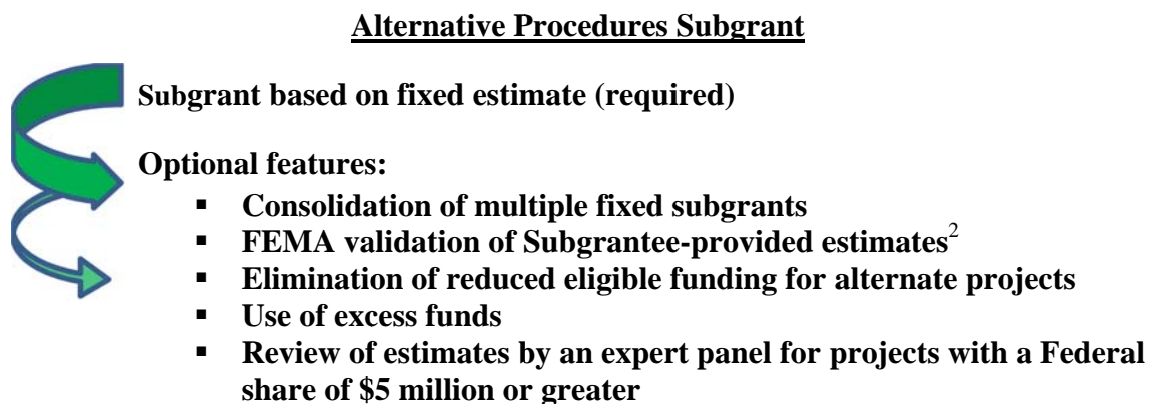
The pilot program implementing the alternative procedures will allow FEMA to gather meaningful information on their effectiveness, establish controls for the proper use of Federal funds, and revise and improve procedures and guidance as the pilot proceeds. It also will allow FEMA to collect data for evaluating the effectiveness of the alternative procedures until regulations are issued to implement the procedures permanently. The law also requires the Department of Homeland Security's Office of the Inspector General (OIG) to report on the permanent work alternative procedures within three to five years of the law's enactment.

PART II. PERMANENT WORK ALTERNATIVE PROCEDURES

This section describes the features of the alternative procedures authorized by the legislation for permanent work. These procedures contain elements that, when used together, give a Subgrantee greater flexibility in using grant funding for its recovery than the standard program provides. As noted in the **Overview**, the pilot program is voluntary. A Subgrantee may apply the alternative procedures to certain facilities, and choose to have other work funded under PA's standard procedures.

To participate in the permanent work alternative procedures, a Subgrantee must agree to participate in the grants based on fixed estimates procedure before having access to other alternative procedures identified below. FEMA requires the fixed estimate subgrant feature to gain access to other alternative procedures to achieve the intent of the Act: reducing the costs to the Federal Government of providing Public Assistance, increasing flexibility in administering such assistance, and expediting assistance. However, FEMA does not require all features of the alternative procedures be selected to participate in the pilot program. Figure 1 summarizes this concept.

Figure 1. Relationship of elements of the alternative procedures for permanent work.



Each permanent work alternative procedure is described below.

² Before the enactment of PL 113-2, FEMA had the authority to accept Subgrantee estimates and had done so when appropriate. Although FEMA will accept Subgrantee estimates under the alternative procedures, it will continue to accept these estimates under the standard procedures.

A. Subgrants Based on Fixed Estimates

As stated above, to participate in the alternative procedures for permanent work, Subgrantees must agree to a subgrant based on a fixed estimate for that subgrant. FEMA will approve funding for a large, uncompleted, permanent work subgrants on the basis of a fixed estimate. This procedure varies from that described in 44 CFR §206.203(c), which provides for funding the actual cost of completing the eligible scope of work. FEMA review for compliance with environmental and historic-preservation laws, executive orders, and other regulations must be completed before work can take place.

Formulation and Management of Fixed Estimate Subgrants

As with subgrants for which payment will be made on the basis of actual costs, FEMA, the Grantee, and the Subgrantee must first formulate the subgrant to address the incident's impact on the Subgrantee's facilities.

Formulation

- FEMA, the Grantee, and Subgrantee must agree on the eligible disaster-damage dimensions and the description and scope of work for the subgrant before completing the cost estimate.
- Eligibility determinations and documentation of the scope of work must be completed in accordance with the PA Program's requirements and according to standard procedures.
- If there is a dispute over the disaster-damage dimensions, description, and/or the scope of work, the subgrant should not be considered for alternative procedures unless it is resolved before the estimate is prepared.
- Once FEMA, the Grantee, and the Subgrantee agree on the damage description, scope of work and cost estimate, the Agency will document the information using a subgrant according to standard procedures.
- As described in the **Overview** section, the subgrant will include the Subgrantee's acknowledgement of its participation in the pilot program and acceptance of the fixed estimate. (A sample acknowledgement form is provided in the Appendix.)
- FEMA will conduct all applicable reviews of the subgrant in accordance with standard procedures, including review for EHP compliance.
- Cost estimates for the individual sites or facilities may include approved Section 406 hazard mitigation . Use of hazard mitigation funds is described in the **Special Considerations Review** section.

Individual Fixed Estimate Subgrants

- For individual fixed estimate subgrants (those not consolidated, as described below), the Subgrantee must, at a minimum, complete the scope of work identified in the subgrant.

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- The Subgrantee is required to document actual costs, and provide sufficient documentation that the scope of work was completed. The Grantee must certify that the work has been completed in accordance with Federal standards.
 - The Subgrantee may request an improved or alternate project through the Grantee. If the Subgrantee requests an alternate project (FEMA must approve), the subgrant will not be subject to the reduction in funding normally required under the standard procedures pursuant to 406(c)(1)(A) and (c)(2)(A). (See **Elimination of the Reduction in Eligible Costs for Alternate Projects** section.)
 - FEMA will ensure that Federal EHP compliance is satisfied for these subgrants.

Actual Costs

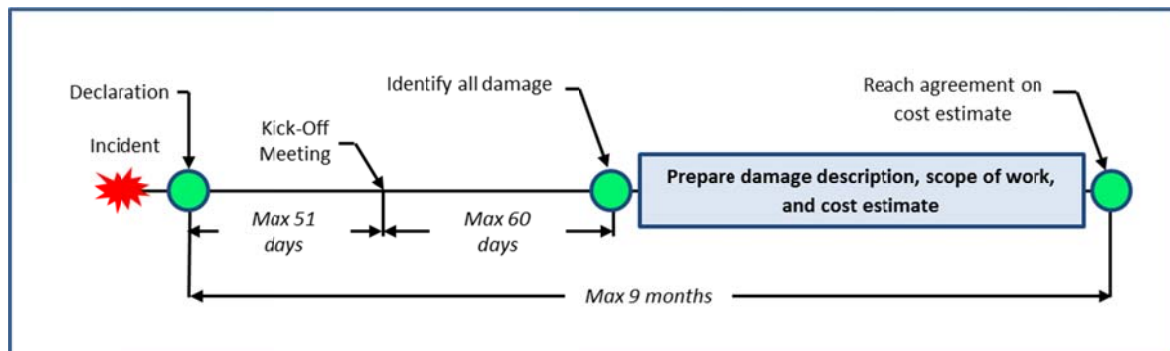
- If the approved fixed estimate is less than the actual cost for the subgrant, FEMA will not approve additional funds.
- In this way, the procedure varies from the standard procedure outlined in 44 CFR §206.204(e), which allows a Subgrantee to request from FEMA additional funding.
- If actual costs are less than the fixed estimated amount, the Subgrantee may use the excess funds for the purposes described in the **Use of Excess Funds** section.

Time Frames for Reaching Agreement on Cost Estimates

The alternative procedures do not change the regulatory timeline for identifying disaster damage, nor do they change PA Program guidance for the timing of kickoff meetings. To achieve the goal of expediting assistance to Subgrantees, agreement on the cost estimate of the fixed grant must be reached within nine months of the declaration date. (FEMA and the Grantee may agree to extend this deadline for complex or catastrophic disasters.) If FEMA, the Grantee, and the Subgrantee cannot agree on the estimate within this time frame, the subgrant will be processed using standard procedures. (For major disasters declared prior to the issuance of this guide, agreement on the cost estimate of the fixed grant must be reached within nine months of the date of the issuance of this guide.)

Figure 2 shows this timeline in the context of other timelines for the PA Program.

Figure 2. Timeline for preparing cost estimates for permanent work fixed estimate subgrants.



Preparation of Cost Estimates

Either FEMA or the Subgrantee may prepare estimates for fixed estimate subgrants. For certain subgrants, they may also be validated by an expert panel, as described below. FEMA will prepare estimates under the alternative procedures using the Cost Estimating Format (CEF) and the guidance provided in the *Cost Estimating Format for Large Projects Instructional Guide* (Version 2.1, September 2009). Estimates prepared by Subgrantees and validated by FEMA are addressed below.

Validation of Subgrantee-Provided Estimates

FEMA will consider Subgrantee-prepared cost estimates that:

- Have been prepared by a professionally licensed engineer, mutually agreed upon by FEMA and the Subgrantee.
- Are properly conducted and certified.
- Comply with regulations, policy, and guidance.

The Subgrantee may request FEMA to consider a cost estimate prepared for any large, permanent work subgrant being funded under the alternative procedures.³ Although FEMA will accept and use an estimate prepared by a Subgrantee as the basis for approving a subgrant, the Agency is required to ensure that the estimate complies with PA Program requirements. Specifically, FEMA will ensure that the estimate does not contain items not consistent with the damage description or recommended scope of work to restore the facility.

The Subgrantee may prepare the estimate using the CEF or a methodology and format consistent in the CEF's level of detail. The Subgrantee may use a licensed professional engineer or other estimating professional to prepare the estimate. The professional will certify that it was prepared according to applicable standards of care for estimating construction costs.

³ FEMA also accepts Subgrantee-provided estimates for subgrants under standard procedures.

FEMA will review the Subgrantee's estimate for validation purposes. It will not create a competing estimate. The review will be conducted according to procedures as outlined in Section 4.10 of the *Cost Estimating Format for Large Projects Instructional Guide*.

Architecture/Engineering Fees and Direct Administrative Costs

FEMA will provide funding for preparing the cost estimate in accordance with PA Program requirements. These costs are based on the actual costs for the design work or a percentage of the eligible cost for the restoration.⁴ FEMA will not provide funding for subsequent planning and design costs for improved projects, alternate projects, or consolidated subgrants.

If the facility requires an engineering analysis before preparing the initial subgrant to determine the cause of damage or the methods of repair, FEMA may prepare a subgrant to fund this analysis. It should describe the parameters of the analysis and, where applicable, include the development of a cost estimate for the prescribed report. The Agency will review the estimate and determine its appropriateness as the basis of initial funding that may result in the Subgrantee accepting a fixed grant.

Direct Administrative Costs (DAC) may be used to capture the costs the Subgrantee incurs for site assessments, for preparing the disaster-damage dimensions and description, and for preparing the scope of work for the subgrant. The cost of preparing the cost estimate for inclusion in the subgrant will also be captured as a DAC. However, if the cost was prepared as part of the design process and is included in the Subgrantee's Architecture/Engineering Fees, the cost will be captured in the subgrant as a direct AE cost or as a percentage of the estimated cost for the eligible scope of work, as described above.⁵ The DAC are considered part of the overall estimate and no additional DAC will be considered at the subgrant's closeout. All estimated reasonable DAC must be identified and included in the fixed subgrant estimate at the time of acceptance.

Review of Estimates by an Expert Panel

Subgrantees may request a FEMA-funded,⁶ independent validation of estimates for permanent work subgrants with an estimated Federal share of at least \$5 million. As stated above, the law directs FEMA to make available an independent expert panel to review and validate cost estimates.

The scope of the panel's responsibilities is described below.

⁴ Refer to Factor H in the CEF for information regarding this percentage.

⁵ As noted earlier, FEMA had the authority to accept Subgrantees' estimates before the enactment of P.L. 113-2, and had done so when appropriate. Although the Agency will accept Subgrantees' estimates under the alternative procedures, it will continue to accept such estimates under the standard procedures.

⁶ The expert panel will be fully funded by FEMA and does not require any non-Federal cost share.

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- FEMA will direct subgrant estimates to the panel at the request of the Subgrantee (through the Grantee). It also has the discretion to direct estimates to the panel for review.
 - The panel will conduct its review before the Subgrantee's acceptance and before FEMA's obligation of funds; it will not be used for appeals.
 - The review will be limited to issues pertaining to the estimated cost; the panel will not make decisions related to the eligible scope of work. However, it may make determinations with regard to incorporation of cost elements relating to project execution that could affect the scope of work.
 - The panel may review cost documentation for completed work, if required.
 - FEMA will abide by the panel's determinations of the value of cost estimates. The resulting estimates will be used as the basis for obligating funds.

The panel will be composed of design, engineering, construction, cost-estimating, and industry professionals retained by a contractor or another agency with which FEMA has established an agreement for the panel's services. They will be independent of FEMA, the Grantee, and the Subgrantee.

B. Consolidation of Fixed Estimate Subgrants

A consolidated subgrant is created when a Subgrantee combines two or more fixed estimates into a single subgrant. This feature is intended to allow the Subgrantee greater flexibility⁷ to execute work across multiple facilities or sites in ways that support its post-disaster recovery needs. The consolidated subgrant may restore the pre-disaster condition, function, and capacity of some or all of the separate sites or facilities contained within the consolidated subgrant, or it may reflect a fundamentally different concept. Funding for the consolidated subgrant is capped at the aggregate amount of the eligible costs for the formerly separate, individual sites or facilities. FEMA will not obligate additional funds if the Subgrantee's costs exceed the fixed estimate. The Subgrantee must notify FEMA within 12 months of the declaration date of the subgrants to be consolidated.

Although the consolidated subgrant is similar to an improved project or an alternate project under standard procedures, it differs in that Subgrantees can complete all work and use excess funds if actual costs are less than the aggregate total of the consolidated fixed estimate. Subgrantees may also share funding from the consolidated fixed subgrant to any of the facilities within the consolidated subgrant in order to meet its post-disaster recovery needs. Nonetheless,

⁷ By "flexibility," FEMA allows discretion in how the Subgrantee uses the funds; it does not imply flexibility on the part of the Agency or the Grantee in administering the grant or in compliance with applicable statutory or regulatory requirements.

the consolidated subgrant must meet all other PA Program requirements and must comply with other applicable Federal requirements, including EHP laws, regulations, and executive orders.

The following scenarios illustrate the concept.

- A county road crosses a water course and its adjacent floodplain, using five culverts. During the disaster, floodwaters overtop the road and damage the crossings, either by washing out the culverts or by damaging the roadway and headwalls. FEMA prepares and approves a subgrant with five site sheets to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. Subsequently, the Subgrantee requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.
- The Subgrantee operates a school campus adjacent to a river. During the disaster, the river floods four nearby buildings. FEMA, Grantee and Subgrantee capture the disaster-damage dimensions and scope of work, and are in agreement. The Subgrantee prepares a scope of work and cost estimates for repairing each building, including flood-proofing measures required by the community's floodplain management ordinance to elevate structures. After validating these estimates, FEMA prepares and approves four subgrants, one for each building, and the Subgrantee accepts them as fixed subgrants. The Subgrantee later decides that its interests would be best served by moving operations away from the river. The Subgrantee plans to demolish the four buildings and consolidate all operations in a new building set back from the river on an expanded footprint at a higher elevation. As a result, the Subgrantee requests that the aggregate amount of funding for the four subgrants be consolidated under one grant and funds applied to designing and constructing the building's expansion.
- The Subgrantee operates 10 facilities located throughout the disaster area. The disaster, an earthquake, damages the facilities, FEMA prepares and approves 10 subgrants for repair or replacement of each facility and the Subgrantee accepts 10 fixed subgrants based on estimates. The Subgrantee determines that, because of changes in the local economy and population, the community would be best served by re-aligning their facility footprint. The Subgrantee proposes to demolish four facilities, restore the remaining six, open a new facility in a different location, and construct an administrative and communications center. As a result, the Subgrantee requests one grant to consolidate the total amount of funding for all 10 fixed subgrants, to be applied to restoring six buildings and constructing two new ones.

Scope and Limitations

Under the alternative procedures, consolidated subgrants will be implemented in accordance with the following:

- The Subgrantee may consolidate only permanent work subgrants. The Subgrantee may consolidate subgrants from different categories of permanent work (e.g., by combining Category C and Category E subgrants) or consolidate within the same category of work (e.g., multiple school-campus sites/locations).
- The Subgrantee must use the consolidated subgrant funds for facilities or equipment that are otherwise eligible for PA Program funding. This includes repair, restoration, or replacement of disaster-damaged facilities; construction of new facilities; repair or replacement of disaster-damaged equipment; or buying new equipment.
- The funds may also be used for measures that reduce future risk.
- The funds may not be used for facilities or equipment not otherwise eligible for PA Program funding. They also may not be used to meet the local cost share for other Federal grants; pay down debts; cover budget shortfalls; meet operating expenses; or conduct planning and design that go beyond the work related to the consolidated subgrant(s), such as community-wide planning.
- The Subgrantee may divide consolidated funds among several facilities or sites.
- FEMA must ensure compliance with applicable EHP laws, regulations, and executive orders before the Subgrantee initiates construction for the consolidated subgrant. This process is described in the **Special Considerations Review** section below.
- Once a Subgrantee requests a consolidated subgrant, FEMA will prepare a new subgrant documenting the consolidation of the fixed subgrants. It will include the fixed-grant estimate that is based on the aggregate sum of the cost estimates for the individual fixed subgrants. If the Subgrantee has identified more proposed scopes of work for the consolidated subgrant for which it intends to use the funds, it should document the change in the scope of work so FEMA can include that information in the new subgrant.
- Once the consolidated subgrant has been obligated, the Subgrantee may request (through the Grantee) that other individual fixed subgrants be added to it. FEMA will prepare a version of the consolidated subgrant to include the damage dimension, scope of work, and cost estimate for the additional fixed subgrant and adjust the aggregate fixed-grant amount. These changes must occur within 12 months.
- A Subgrantee may consolidate subgrants after each project has been approved as an individual subgrant. Alternatively, a Subgrantee may decide early in the recovery timeline that a consolidated subgrant is preferred. In the interest of efficiency, and with the proper request from the Subgrantee, the consolidated subgrant can be prepared up front (i.e., the facilities being consolidated do not need to be prepared separately, approved, and then consolidated). However, the basis of funding is derived from the original damaged facility, not the anticipated scope of the consolidated subgrant.

Funding Limits for Consolidated Subgrants

The limits of funding for any consolidated subgrant are defined by the total of chosen fixed subgrants combined into the single consolidated subgrant. It is possible that the fixed estimates for the individual subgrants will include funding for approved section 406 hazard mitigation. Use or retention of such hazard mitigation funds may not be included if the Subgrantee chooses to replace or relocate a facility as described in the **Special Considerations Review** section.

C. Elimination of the Reduction in Eligible Costs for Alternate Projects

Under standard procedures, FEMA reduces the eligible cost for alternate projects in accordance with the requirements of sections 406(c)(1) and 406(c)(2) of the Stafford Act. Under the alternative procedures, FEMA will no longer implement this reduction for subgrants funded under the alternative procedures pilot program. This provision applies only to projects for which the Subgrantee requests alternative procedures for a subgrant based on a fixed estimate. Subgrants approved and obligated under standard procedures are not eligible for elimination of the reduction in eligible costs for alternate projects. All alternate project scopes of work require FEMA's review and approval in accordance with PA Program requirements.

D. Use of Excess Funds

When the actual cost of the work for a subgrant is less than the fixed estimate, the Subgrantee may use the excess funds for PA Program-related purposes. The following are allowable uses:

- Hazard mitigation activities that will reduce the risk of damage in future disasters. The Subgrantee may use the funds for hazard mitigation on facilities not damaged in the declared disaster. However, the mitigation must be applied to facilities that would otherwise be eligible for PA Program funding. The law also states that mitigation measures must be cost-effective; the Subgrantee is responsible for documenting cost-effectiveness. The criteria outlined in Recovery Policy 9526.1, *Hazard Mitigation Funding Under Section 406 (Stafford Act)*, may be used for this purpose.
- Activities that improve future PA Program permanent work operations, such as training and planning for future disaster recovery operations.
- For consolidated subgrants, otherwise-eligible PA Program project activities, such as improved projects, alternate projects, etc.

Unacceptable uses include:

- Payment of debts
- Payment of the non-Federal share of PA Program subgrants or other Federal grants
- Operating expenses
- Cost overruns on other PA Program subgrants (that are not part of the consolidated subgrant)

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- Incorporation into the community's General Fund
 - Restoring or replacing a facility not damaged in the declared disaster (hazard mitigation excepted)
 - Restoring or replacing a facility that would otherwise not be eligible for PA Program funding

The Subgrantee will notify the Grantee in writing of its intent to use excess funds, including the intended scope of work and project timeline. FEMA will prepare a new subgrant to document the use of these funds. The Grantee and FEMA will review the request and determine eligibility for the funds and also allow appropriate time for their use. The Agency will conduct a review of the new scope of work for EHP compliance. Obtain-and-maintain requirements for insurance apply to work funded with surplus funds, as appropriate.

E. Special Consideration Reviews

Each subgrant processed using alternative procedures will be reviewed for special considerations, including EHP compliance, insurance, and hazard mitigation when the Subgrantee makes changes or enhancements to an approved fixed subgrant scope of work. The actions taken in these reviews for alternative procedures subgrants are described below.

Environmental/Historic Preservation Compliance Review

FEMA is required to ensure compliance with applicable EHP laws, regulations, and executive orders when implementing alternative procedures. The Agency is also required to ensure compliance before construction is initiated, even when it is giving the Subgrantee the flexibility to use the fixed subgrant or consolidated subgrant funds where the intention is to increase the subgrant's scope of work. An additional EHP review will be required if a Subgrantee requests use of surplus funds consistent with pilot program requirements. FEMA will include a condition of the grant regarding the Subgrantee's obligation to notify the Grantee, once the specifics of the consolidated project(s) or use of the surplus funds have been determined. The Grantee will notify FEMA of the proposed work and inform the Agency that additional EHP review must be conducted to ensure compliance before construction begins. If the Subgrantee does not comply with the conditions of the grant, FEMA will deobligate the funding for the affected elements of the consolidated subgrant, or the subgrant as a whole, depending on the circumstances.

Insurance

FEMA will evaluate insurance coverage for an alternative procedures subgrant to determine:

- Known actual insurance proceeds for the eligible work.
- The anticipated insurance proceeds for the eligible work based upon the coverage in place, if the actual proceeds are not known.

Insurance reductions will be based on actual or anticipated proceeds at the disaster-damaged facility. The fixed estimate for individual or consolidated facilities will maintain this reduction, even if the Subgrantee does not perform the original scope of work. The overall agreed-upon fixed estimate will not be revised. The only exception will be when a Subgrantee receives more proceeds from insurance than what was originally reduced from the fixed estimate. This is to comply with section 312 of the Stafford Act, which prohibits duplication of benefits, including insurance.

Mitigation

Section 406 hazard mitigation funds are discretionary funds that can be added to funding for the repair of disaster-damaged facilities to reduce the risk of damage to them in future disasters. For subgrants funded under standard procedures, 406 mitigation funds cannot be obligated if the Subgrantee requests an alternate or improved project that involves relocation, or if the facility is eligible for replacement rather than repair. To promote greater flexibility and more-resilient mitigation under the alternative procedures, FEMA may allow use of 406 hazard mitigation funds with alternative procedures subgrants as follows:

- Hazard mitigation proposals (HMPs) may be considered for improved projects at a new location and for replacement projects when the measure is not required by codes and standards. The Subgrantee must demonstrate that the additional mitigation benefit, beyond that provided by new construction to required codes and standards, is cost-effective.
- The Subgrantee's HMP must be developed for the disaster-damaged element and the proposed repair of it. (There could be multiple HMPs if the Subgrantee intends to consolidate several sites or facilities.)
- When FEMA has already written and approved a subgrant with HMPs, the Subgrantee may consolidate them, subject to the conditions already provided.
- Mitigation measures must be cost-effective and technically feasible in relation to the repairs necessary to restore the disaster-damaged element, in accordance with PA Program requirements.
- Before FEMA's approval of a consolidated subgrant, the Subgrantee must demonstrate that it either incorporates specific mitigation measures or is designed to achieve risk reduction (e.g., through incorporating design features that achieve compliance with building code requirements pertaining to applicable hazards). The risk reduction under a consolidated subgrant must be equivalent to or greater than that of the fixed subgrant's approved HMP scope of work. If this cannot be demonstrated, the section 406 hazard mitigation funding will not be included in the consolidated subgrant.
- Subgrants under alternative procedures are also subject to Strategic Funds Management (SFM), as appropriate, as outlined in guidance for the SFM initiative.

FEMA will not fund further design changes or proposals for mitigation measures that could be incorporated into a consolidated subgrant once it has been obligated by the Agency. After completing the scope of work, the Subgrantee may use any excess funds for mitigation, as described above.

PART III. GRANTS MANAGEMENT REQUIREMENTS

The process for monitoring and closing subgrants is streamlined under the alternative procedures. The sections below outline grants management requirements.

A. Grants Management Activities

For subgrants funded under the alternative procedures, major activities conducted during the Grants Management phase are as follows:

- The Subgrantee must complete work within established regulatory time frames and request time extensions as appropriate.
- The Subgrantee must submit quarterly progress reports to the Grantee for large projects in which the work is not completed and financially reconciled.
- The Grantee will provide funds to the Subgrantee in accordance with Federal and State requirements.
- The Grantee will ensure that Subgrantees understand and adhere to Federal procurement requirements, as well as other requirements of 44 CFR Part 13, 2 CFR Part 215, and the appropriate Office of Management and Budget circulars.
- The Grantee will ensure that Subgrantees comply with EHP requirements, notify FEMA of any work that requires EHP compliance reviews, and provide necessary documentation to conduct EHP reviews.
- The Subgrantee must not deposit grant funds in an interest-bearing account. If that occurs, the Subgrantee must remit to FEMA any interest earned.
- The Subgrantee will submit to the Grantee a final report of project costs. This report will not be used for reconciliation of the fixed grant to actual costs, but rather to ensure eligibility and to track and monitor the success of the pilot. The final report should include the following components:
 - Actual work completed with fixed-grant funds
 - Mitigation measures achieved, if applicable
 - Documentation of compliance with any subgrant conditions
 - Compliance with EHP conditions
 - Total actual costs to complete the subgrant (especially if greater than the fixed estimate).
 - Excess funds and work to be completed with them
 - Compliance with Federal procurement procedures
 - Actual insurance proceeds received by Subgrantee

B. Subgrant Closure

Alternative procedures subgrants are closed when the approved scope of work is completed, and the Subgrantee provides the Grantee an accounting of the subgrant in accordance with the above requirements. The Grantee will provide the accounting to FEMA and will request the subgrant be closed. Based upon the outcome of the financial accounting, the Grantee may request that any excess funds be included in a new PW for the Subgrantee's future use, within regulatory time frames unless a timeline for using the excess funds is required and granted.

C. Appeals

For subgrants funded using the alternative procedures, the Subgrantee can submit an appeal, in accordance with 44 CFR§206.206, only for subgrant approval and obligation; and corrective actions resulting from compliance reviews, such as an audit. Since additional fixed subgrants can be added to a consolidated permanent work subgrant (through a version of the subgrant), the obligation of that version can also be appealed. However, the appeal can address only the damage dimension, scope of work, or cost estimate for fixed subgrant included in that version, not the other subgrants included in the previously obligated consolidated subgrant or versions.

If an appeal occurs as a result of the subgrant approval process, the subgrant cannot be considered for a fixed subgrant under the alternative procedures until the appeal is adjudicated and a determination is made.

D. Audits and Compliance Reviews

The Office of Inspector General will have the ability to audit any Subgrantee and/or subgrant. FEMA also can conduct compliance reviews of grants and subgrants. Any corrective actions the Agency takes as a result of these audits or compliance reviews may be appealed in accordance with 44CFR §206.206. For alternative procedures subgrants, a compliance audit will review subgrants and costs to ensure that the Subgrantee complied with this document's guidelines and other applicable requirements.

PART IV. REPORTING AND PERFORMANCE MEASURES

FEMA will review and evaluate the alternative procedures pilot program to determine how it has met the objectives of the Sandy Recovery Improvement Act. The following are data elements that could support this requirement.

- Whether the alternative procedures improved the general speed of disaster recovery
 - Comparison of time frame for approving pilot program subgrants with that for approving those not in the program
 - Comparison of time frame for approving subgrants based on Subgrantee-provided estimates with that for approving subgrants for which FEMA prepared the estimates
 - Comparison of number of versions prepared for pilot program subgrants with the number prepared for those not in the standard program
 - Number of appeals based on cost
- The accuracy of cost estimates
 - Comparison of estimates for pilot program subgrants to actual costs
 - Comparison of estimates for all subgrants (including those not in the pilot program) to actual costs
 - Number of pilot program subgrants that were overfunded and underfunded
 - Tracking the accuracy of Subgrantee-provided estimates, compared with those FEMA prepared. Number of subgrants for which costs were adjusted based on audit
- Whether the financial incentives and disincentives were effective
 - Percentage of subgrants for which Subgrantees agreed to be paid on the basis of estimates
 - Information from exit briefing regarding why Subgrantees chose to participate or not
- Whether the alternative procedures were cost-effective
 - Comparison of time frame for approving subgrants based on Subgrantee-provided estimates with that for approving subgrants for which FEMA prepared estimates
- Whether the independent expert panel was effective
 - Percentage of cases in which it was used (relative to the total number of cost estimates)
 - Percentage of cases in which it found the Subgrantee's estimate reasonable
 - Duration of panel reviews
 - Cost of panel operations

APPENDIX

Public Assistance Alternative Procedures Pilot Program Acknowledgement SAMPLE

In accordance with the Sandy Recovery Improvement Act of 2013, the Federal Emergency Management Agency (FEMA) is implementing alternative procedures for the Public Assistance (PA) Program through a pilot program. As a representative of the Subgrantee, I understand the following:

1. The pilot includes the following elements for permanent work:
 - Subgrants based on fixed estimates, with the Subgrantee accepting responsibility for costs above the estimate
 - Use of surplus funds for hazard mitigation and activities to improve future PA operations
 - Consolidation of multiple permanent work facilities into a single subgrant
 - Elimination of the penalty for alternate projects based on fixed-grant estimates
 - Acceptance of mutually agreed-upon cost estimates prepared by the Subgrantee's licensed engineer
 - Use of an expert panel to validate cost estimates with a federal share of \$5 million or more
2. The pilot is voluntary, and a Subgrantee may participate in alternative procedures for one or more subgrants.
3. If the Subgrantee accepts a fixed-grant estimate, the Subgrantee cannot apply for additional funding. The Subgrantee may appeal FEMA's obligation of the subgrant as well as any corrective actions resulting from compliance reviews, such as an audit.
4. For permanent work, the Subgrantee acknowledges the requirement to complete the approved scope of work for individual subgrants for which a fixed-grant estimate has been prepared. It also agrees to notify the Grantee regarding the specific use of funding for consolidated subgrants, once a determination on the use of funding has been made, and to notify the Grantee regarding use of excess funds.
5. All contracts must comply with local, State, and Federal requirements for procurement, including provisions of 44 CFR Part 13.
6. The Office of Inspector General may audit any Subgrantee and/or subgrant.
7. EHP review must be completed for all subgrants, including alternate and consolidated subgrants, before the subgrant scope of work is implemented. Failure to comply with this requirement may lead to loss of federal funding.

Signature of Subgrantee's Authorized Representative

Date

Printed Name and Title