

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.036 DISASTER GRANTS – PUBLIC ASSISTANCE (Presidentially Declared Disasters)

I. PROGRAM OBJECTIVES

The objective is to provide assistance to State, Indian tribal, and local governments, and certain types of private nonprofit organizations under the Public Assistance (PA) program.

II. PROGRAM PROCEDURES

Following a Presidential declaration of a major disaster or an emergency, the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), awards grants to assist State and local governments and certain private nonprofit (PNP) entities with the response to and recovery from disasters. Specifically, the PA program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure. The PA program is based on a partnership with the grantee (State or tribal government) and FEMA and local officials. FEMA is responsible for managing the program, approving grants, and providing technical assistance to the State (or Indian tribal government) and applicants (subgrantees). The State, in most cases, acts as the grantee for the PA program and is responsible for providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of funding assistance available, and submitting documents necessary for grant awards (44 CFR sections 206.200 through 206.349). An Indian tribal government may also be a grantee. FEMA, the State (or Indian tribal government) and the applicant (subgrantee) are all responsible for grants awarded under the PA program.

For purposes of the PA program, the following terms will be used:

State – The State Agency that is defined as the grantee under FEMA regulations and acts as the grant administrator for the program.

Tribal government - Any federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Subgrantee – The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided (44 CFR section 206.201(l)). (For example, in explaining this program, a State Highway Agency is considered a subgrantee of a State Emergency Agency even though both agencies may be included in the same statewide single audit.)

RA – The FEMA Regional Administrator.

PA program awards are made based upon a Project Worksheet (PW) prepared by a project formulation team. The project formulation team normally includes a representative of FEMA, the State, and the subgrantee. The PW documents the project formulation team's determination of the eligible scope of work and cost estimate. The PA program will fund a part of this eligible work in accordance with the FEMA-State Agreement. Each PW has a control number and any supplemental PWs will be referenced to the original PW.

Projects are classified as large or small projects according to the cost of the eligible work for the individual project. Section 422 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42, USC 5189 prescribes that small project grants under the PA program be adjusted annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers, published by the Department of Labor. Projects with costs that equal or exceed this threshold are large projects; projects that cost less than the threshold are small projects. The threshold is adjusted each October to reflect changes in the CPI. The date the disaster is declared by the President determines the threshold in use for that project. The following table shows the threshold for fiscal years 2005 through 2016:

<i>Threshold</i>	<i>Applicable Period</i>
\$57,500	October 1, 2005-September 30, 2006
\$59,700	October 1, 2006 –September 30, 2007
\$60,900	October 1, 2007-September 30, 2008
\$64,200	October 1, 2008-September 30, 2009
\$63,200	October 1, 2009-September 30, 2010
\$63,900	October 1, 2010-September 30, 2011
\$66,400	October 1, 2011-September 30, 2012
\$67,500	October 1, 2012-September 30, 2013
\$68,500	October 1, 2013-February 25, 2014
\$120,000	February 26, 2014-September 30, 2014
\$121,600	October 1, 2014-September 30 2015
\$121,800	October 1, 2015-September 30, 2016

Small Projects

Applicants are encouraged to make their own estimates for small projects and prepare PWs to be submitted to FEMA. FEMA will validate a 20 percent sample of the small projects prepared by the applicant and verify that the scope of the work is eligible and the cost estimate is reasonable. If the sample passes this validation, FEMA accepts all small project PWs from the applicant and obligates the funds. If the sample fails, a second 20 percent is reviewed. If the second sample also fails, FEMA assigns a specialist to assist the applicant in reformulating and resubmitting all small projects to FEMA. A FEMA specialist is assigned to formulate an applicant's small projects when an applicant elects not to do so.

For small projects, final payment of the Federal share of eligible costs is made upon approval of the project. The amount awarded for small projects based on the PW generally will not change except under unusual circumstances, such as failure to complete the work, an unexpected insurance recovery, or an obvious error in calculation. At closeout of the disaster, the State is required to certify that all projects were properly completed and that the State met its cost-sharing contribution, as specified in the FEMA-State Agreement. However, this certification does not specify the amount spent by a subgrantee on small projects. If the actual cost for small projects is less than the estimated cost on the PW and the scope of work is completed, FEMA will not ask for a refund. Similarly, FEMA generally will not provide additional funding when actual costs exceed the PW estimate. However, provision is made that, when a subgrantee has significant overruns, an appeal may be made to FEMA for additional funding based upon the total final costs for all small projects (44 CFR sections 206.204(e) and 206.205(a)).

Large Projects

For large projects, the State must make an accounting to FEMA of eligible costs for each approved large project. In submitting the accounting, the State must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the FEMA-State Agreement, and that payments for the project have been made in accordance with 44 CFR section 13.21 requirements for payment. The subgrantee is required to make similar accounting and certifications to the State. If actual costs are less than the approved amount, then the FEMA share will be based upon the actual costs. The subgrantee may request additional funding for eligible cost overruns on large projects. For additional funding, these requests must include a written recommendation from the State and approval of the RA (44 CFR sections 206.204(e) and 206.205).

Improved Projects

If a subgrantee desires to make improvements, but still restore the pre-disaster function of a damaged facility, State approval must be obtained. Federal funding for an improved project is limited to the Federal share of the approved estimate of the eligible costs to repair or replace the disaster-damaged facility. The Federal share will only restore the pre-disaster capacity of the damaged or destroyed facility. For example, if eligible work to restore the pre-disaster capacity is \$100,000, and the subgrantee chooses to rebuild an improved facility that costs \$200,000, then the FEMA share is only based on the \$100,000. However, if the actual cost is less than the eligible work of \$100,000 (e.g., construction costs are much lower than expected), then a FEMA adjustment is required (44 CFR section 206.203).

Alternate Projects

In a case where the subgrantee determines that the public welfare would not be best served by restoring a damaged public facility, the State may request that FEMA approve an alternate project. This option is available only for permanent, restorative work. Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the non-Federal share of any project or for any operating expense (44 CFR section 206.203(d)(2)).

Funds approved for an alternate project can be used only for alternate projects specifically approved by FEMA. While the States and subgrantees have flexibility to propose the type and size of alternate projects they wish to construct, FEMA must review such proposed projects to ensure compliance with environmental and other special concerns (44 CFR section 206.203).

Eligibility of Force Account Labor Straight-Time Costs under the Public Assistance Program for Hurricane Sandy

The Sandy Debris Removal interim final rule, 77 FR 67285, published November 9, 2012, amends 44 CFR section 206.228(a)(2) to allow for the reimbursement of the straight- or regular-time salaries and benefits of an eligible applicant's permanently employed personnel who perform disaster-related debris and wreckage removal work. The rule is applicable for all emergencies or major disasters declared on or after October 27, 2012, in response to Hurricane Sandy, for work performed under Sections 403(a)(3)(A), 502(a)(5), and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 USC 5170b(a)(3)(A), 5192(a)(5), and 5173. This rule applies to State and local governments, Indian tribes or authorized tribal organizations, and certain PNPs (see Recovery Fact Sheet 9580.215 (<http://www.fema.gov/media-library/assets/documents/29714?id=6670>)).

Alternative Procedures

The Sandy Recovery Improvement Act of 2013 (Pub. L. No. 113-2) amended Title IV of the Stafford Act (42 USC 5121 *et seq.*) (Stafford Act) by adding Section 428, which authorizes FEMA to implement alternative procedures for the PA program, under Sections 403(a)(3)(A), 406, 407, and 502(a)(5) of the Stafford Act, through a pilot program.

Alternative procedures for debris removal pilot: This pilot is authorized for major disasters and emergencies declared on or after June 28, 2013, the sole exception is FEMA-4117-DR-OK, which was authorized previously by the President specifically for that major disaster declaration. FEMA extended this pilot program to June 27, 2016 to enable collection of additional data that will be used to evaluate the effectiveness of the alternative procedures and inform decisions as to which alternative procedures should be permanently incorporated in the PA program.

For major disasters and emergencies declared between June 28, 2013 and June 27, 2014, the debris removal alternative procedures, with the exception of reimbursement for straight-time force account labor, are for large projects only. For major disasters and emergencies declared on or after June 28, 2014, all of the debris removal alternative procedures can be applied to both small and large projects.

- a. *Accelerated Debris Removal--Increased Federal Cost Share (Sliding Scale) Procedure* – Provides an increased Federal cost share via a sliding scale to incentivize subgrantees to initiate and complete debris removal operations quickly after a disaster. Unless FEMA authorizes an extension, e.g., when unusual circumstances delay the start or completion of work, FEMA will limit the amount of time to complete debris removal activities to 180 days from the start of the incident. Direct Federal Assistance (DFA) is not available to subgrantees using this procedure.

Debris Removal Completed (Days from Start of Incident Period)	Federal Cost Share
0–30	85%
31–90	80%
91–180	75%
Federal dollars will NOT be provided for debris removal after 180 days unless FEMA authorizes an extension in writing	

- b. *Debris Management Plan Procedure* – Provides a one-time two (2) percent Federal cost share increase for the first 0-90 days when a subgrantee has a FEMA-accepted Debris Management Plan and has pre-qualified one or more debris removal contractors before the declaration.
- c. *Straight-Time Force Account Labor Procedure* – Provides reimbursement of base wages for a subgrantee’s own employees that perform or administer debris removal.
- d. *Recycling Revenue Procedure* – Allows subgrantees to retain program income received from recycled debris if used for activities that will improve debris removal operations in the future.

Alternative procedures for permanent work pilot: The alternative procedures pilot for permanent work is effective for major disasters declared on or after May 20, 2013. The alternative procedures may also be applied in previously declared major disasters for projects where construction has not yet begun. This pilot will remain in place until FEMA promulgates and adopts revised regulations that reflect the program changes the law authorizes.

- a. *Subgrants Based on Fixed Estimates* – Subgrantees may receive subgrants based on fixed estimates within 9 months of the declaration. This provides subgrantees with the flexibility to repair or rebuild a facility as it deems necessary for its operations with no requirement to rebuild to pre-disaster design, capacity or function.
- b. *Consolidation of Fixed Estimate Subgrants* – Subgrantees may combine two or more fixed subgrants into a single fixed subgrant within 12 months of the declaration date. This feature allows flexibility to execute work across multiple facilities or sites in ways that support a subgrantee’s post-disaster recovery needs.
- c. *Elimination of the Reduction in Eligible Costs for Alternate Projects* – FEMA will not implement the reduction (per Sections 406(c)(1) and 406(c)(2) of the Stafford Act) on alternate projects.
- d. *Use of Excess Funds* – Subgrantees may use excess 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 PA operations or planning when the actual cost of the work is less than the fixed amount.

- e. *Review of Estimates by an Expert Panel* – Subgrantees may request a FEMA-funded, independent validation of estimates for permanent work subgrants with an estimated Federal share of at least \$5 million.

Administrative Costs

FEMA also provides funding for costs incurred by States and their subgrantees in administering the PA program. For disaster or emergency declarations prior to November 13, 2007, the State receives a statutory administrative cost allowance determined according to a formula based on percentages of the aggregate Federal share of funding provided to subgrantees for approved PA projects. The State awards administrative cost allowances to subgrantees according to a formula based on percentages of the subgrantees' net eligible project costs. All administrative costs must be supported with source documentation.

For disaster or emergency declarations on or after November 13, 2007, the State is eligible for management costs to administer the PA program. Management costs are defined as indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project. The available funding for management costs is based on a 3.34 percentage rate for disaster declarations and a 3.90 percentage rate for emergency declarations. The rate is applied to the projected Federal share of project funding. The State's request for management costs is subject to FEMA approval. A subgrantee may use management cost funding made available by the State, as prescribed in the State administrative plan, to administer PA projects (interim final rule, 44 CFR parts 206 and 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

Source of Governing Requirements

This program is authorized by 42 USC 5121 *et seq.* Program regulations issued by FEMA are codified at 44 CFR sections 206.200 through 206.349.

Availability of Other Program Information

Additional program information is available on the FEMA website at: <http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements apply, and then determine which of the applicable requirements is likely to have a direct and material effect on the Federal program at the auditee. For each such requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit.

<i>A. Activities Allowed or Unallowed</i>	<i>B. Allowable Costs/Cost Principles</i>	<i>C. Cash Management</i>	<i>E. Eligibility</i>	<i>F. Equipment and Real Property Management</i>	<i>G. Matching, Level of Effort, Earmarking</i>	<i>H. Period of Performance</i>	<i>I. Procurement and Suspension and Debarment</i>	<i>J. Program Income</i>	<i>L. Reporting</i>	<i>M. Subrecipient Monitoring</i>	<i>N. Special Tests and Provisions</i>
Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y

A. Activities Allowed or Unallowed

The allowed activities for the PA program are for the approved project as described on the PW and supporting documentation. The approved project may be repair or replacement of the damaged facility, an improved project, or an alternate project (44 CFR section 206.203).

B. Allowable Costs/Cost Principles

1. ***Equipment Usage*** – The PA program restricts eligible direct costs for applicant-owned equipment used to perform eligible work to reasonable rates that were established under State guidelines, or when the hourly rate exceeds \$75, rates may be determined on a case-by-case basis by FEMA. When local guidelines are used to establish equipment rates, reimbursement is based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. Provision is also made when no rates are established or the entity wishes to claim an equipment rate that exceeds the FEMA Schedule (44 CFR section 206.228(a)(1)).

2. ***Administrative Costs***

- a. ***Grantee***

For major disaster or emergency declarations before November 13, 2007, a State may use funds made available by FEMA under its administrative cost allowance only for extraordinary direct costs of preparing PWs, final inspection reports, project applications, etc., and for making final audits and related field inspections. Specific cost items allowable for such purposes include overtime pay, per diem and travel expenses for State employees, but not regular (straight time) salaries. Cost items not eligible for funding from the State's administrative cost allowance, but still related to managing the program, may be funded from the grant if prescribed in an approved PW (44 CFR sections 206.228(a)(2) and (a)(3) and interim final rule, 44 CFR section 207.9, effective November 13, 2007 (72 FR 57878, October 11, 2007)).

For major disaster or emergency declarations on or after November 13, 2007, a State may request funds from FEMA for management costs, which include indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred in administering and managing the program within dollar ceilings and timeframes established by regulation (interim final rule, 44 CFR sections

206.207 and 206.228 and part 207, effective November 13, 2007 (72 FR 57876 through 57878, October 11, 2007)).

b. *Subgrantee*

For major disaster or emergency declarations prior to November 13, 2007, a subgrantee may use funds made available in its administrative cost allowance for necessary costs to request, obtain, and administer its subgrant. No other direct or indirect costs are allowable at the subgrantee level (44 CFR sections 206.228(a)(3) and interim final rule, 44 CFR section 207.9, effective November 13, 2007 (72 FR 57878, October 11, 2007)).

For disaster or emergency declarations on or after November 13, 2007, a subgrantee may use management cost funding made available by the State, as prescribed in the State administrative plan, to administer PA projects (interim final rule, 44 CFR sections 206.207 and 206.228 and part 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

3. ***Force Account Labor Costs*** – The straight- or regular-time salaries and benefits of a subgrantee’s permanently employed personnel are not eligible in calculating the cost of eligible work for emergency protective services or debris removal under Sections 403 and 407 of the Stafford Act (42 USC 5170b and 5173, respectively). For performance of eligible permanent restoration under Section 406 of the Stafford Act (42 USC 5172), straight-time salaries and benefits of a subgrantee’s permanently employed personnel are eligible (44 CFR section 206.228(a)(2)).
4. ***Insurance and Other Recoveries*** – Auditors are advised that there are likely to be amounts from insurance settlements, salvage, or other sources that must be considered in determining allowable costs because allowable costs must be net of applicable credits (42 USC 5155).

E. Eligibility

1. **Eligibility for Individuals** – Not Applicable
2. **Eligibility for Group of Individuals or Area of Service Delivery** – Not Applicable
3. **Eligibility for Subrecipients**

A State may award subgrants under this program to the following types of entities:

- a. State and local governments;

- b. Private non-profit organizations or institutions which own or operate a private non-profit facility, such as (but not limited to) an educational, medical, or custodial care facility, or other facility providing essential governmental type services to the public; and
- c. Indian tribes or authorized tribal organizations and Alaskan Native villages or organizations (but not Alaskan Native Corporations, the ownership of which is vested in private individuals) (44 CFR sections 206.221 and 206.222).

G. Matching, Level of Effort, Earmarking

1. Matching

- a. Costs must be on a shared basis, as specified in the FEMA-State Agreement. In general, the minimum Federal share is 75 percent of eligible costs (44 CFR section 206.65). The non-Federal share that is split between the State and each subgrantee may vary. The accountability for meeting the matching requirement resides with the State and is determined at the time of project accounting as part of project closeout (i.e., the non-Federal share does not have to be met until the end of the project).

However, matching requirements for alternate projects vary from this general rule and fall into one of two categories:

- (1) *Public facilities.* Eligible costs for public facilities are 90 percent of the approved Federal estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Eligible damage

_____ × .75 - % Federal Cost Share

\$ 75,000 – Subtotal

_____ × .90 – of Federal Cost Share

\$ 67,500 – Maximum amount subgrantee may receive.

In this example, the subgrantee must spend at least \$75,000 on the approved alternate project to receive \$67,500. If the subgrantee spends less than the alternate project amount, then the Federal cost share would be 75 percent of the actual amount spent.

- (2) *Private non-profit facilities.* Eligible costs for PNP facilities are 75 percent of the approved Federal estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Eligible damage

_____ × .75 - % Federal Cost Share

\$ 75,000 – Subtotal

_____ × .75 – of Federal Cost Share

\$ 56,250 – Maximum amount subgrantee may receive.

In this example, the subgrantee must spend at least \$75,000 on the approved alternate project to receive \$56,250. If the subgrantee spends less than the alternate project amount, then the Federal cost share would be 75 percent of the actual amount spent.

- b. There is no matching requirement for PA grants made to Louisiana, Mississippi, Florida, Alabama and Texas in connection with Hurricanes Katrina, Wilma, Dennis and Rita (Title IV, Pub. L. No. 110-28).

2. Level of Effort – Not Applicable

3. Earmarking

For major disaster or emergency declarations prior to November 13, 2007, the State makes funding available to subgrantees for their direct costs to request, obtain, and administer PA projects according to the following formula:

- (a) three percent of the subgrantee's first \$100,000 of net eligible project costs; (b) two percent of the subgrantee's next \$900,000 of such costs; (c) one percent of the subgrantee's next \$4 million of such costs; and (d) one-half of one percent of the subgrantee's net eligible costs over \$5 million (interim final rule, 44 CFR section 207.9(b)(2), effective November 13, 2007, 72 FR 57878,

October 11, 2007).

For major disaster or emergency declarations on or after November 13, 2007, the State makes management cost funding available to subgrantees, as prescribed in the State administrative plan, to administer PA projects (interim final rule, 44 CFR sections 206.207 and 206.228 and part 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

L. Reporting**1. Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Applicable only to those non-Federal entities who do not utilize the Department of Health and Human Services, Payment Management System.
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable**3. Special Reporting** – Not Applicable**N. Special Tests and Provisions****Project Accounting**

Compliance Requirement – For large projects, the State is required to make an accounting to FEMA of eligible costs. Similarly, the subgrantee must make an accounting to the State. In submitting the accounting, the entity is required to certify that reported costs were incurred in performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project were made in accordance with the 44 CFR section 13.21 payment provisions. For improved and alternate projects, if the total cost of the projects does not equal or exceed the approved eligible costs, then the auditor should expect to see an adjustment to reduce eligible costs (44 CFR section 206.205).

Audit Objective – Determine whether ongoing and completed projects were accounted for in accordance with the required certification.

Suggested Audit Procedures

Projects not completed – Select a sample of ongoing large projects and ascertain if costs submitted for reimbursement were in compliance with the requirements for eligible work under the applicable PW. Testing should consider the differences in the requirements and approvals required of improved and alternate projects.

Completed projects – Select a sample of large projects completed during the audit period and ascertain if the entity's files document the total costs as allowable costs and if the costs are for allowable activities under the applicable PW. This testing should consider the differences in the requirements and approvals required of improved and alternate projects.

IV. OTHER INFORMATION

Recording Expenditures on the Schedule of Expenditures of Federal Awards (SEFA)

Non-Federal entities must record expenditures on the SEFA when: (1) FEMA has approved the non-Federal entity's PW, and (2) the non-Federal entity has incurred the eligible expenditures. Federal awards expended in years subsequent to the fiscal year in which the PW is approved are to be recorded on the non-Federal entity's SEFA in those subsequent years.

For example,

1. If FEMA approves the PW in the non-Federal entity's fiscal year 2014 and eligible expenditures are incurred in the non-Federal entity's fiscal year 2015, the non-Federal entity records the eligible expenditures in its fiscal year 2015 SEFA.
2. If the non-Federal entity incurs eligible expenditures in its fiscal year 2014 and FEMA approves the non-Federal entity's PW in the non-Federal entity's fiscal year 2015, the non-Federal entity records the eligible expenditures in its fiscal year 2015 SEFA with a footnote that discloses the amount included on the SEFA that was incurred in a prior year.