

**Public Assistance**  
**Alternative Procedures**  
**Pilot Program**  
**Guide for Permanent Work (Version 2)**  
December 19, 2013



**FEMA**

**Federal Emergency Management Agency**  
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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 and repair, restoration, and replacement of disaster-damaged public and private nonprofit facilities (permanent work). This guide outlines the alternative procedures for permanent work.

## ***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).
- 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.

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- 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 permanent work pilot program is effective for any major disaster declared on or after May 20, 2013. FEMA may also approve subgrants using the alternative procedures for major disasters declared before this date if construction has not begun.

The alternative procedures contained in this document are only for large projects.<sup>1</sup>

### ***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 permanent work alternative procedures as a pilot 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

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<sup>1</sup> 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.

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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.

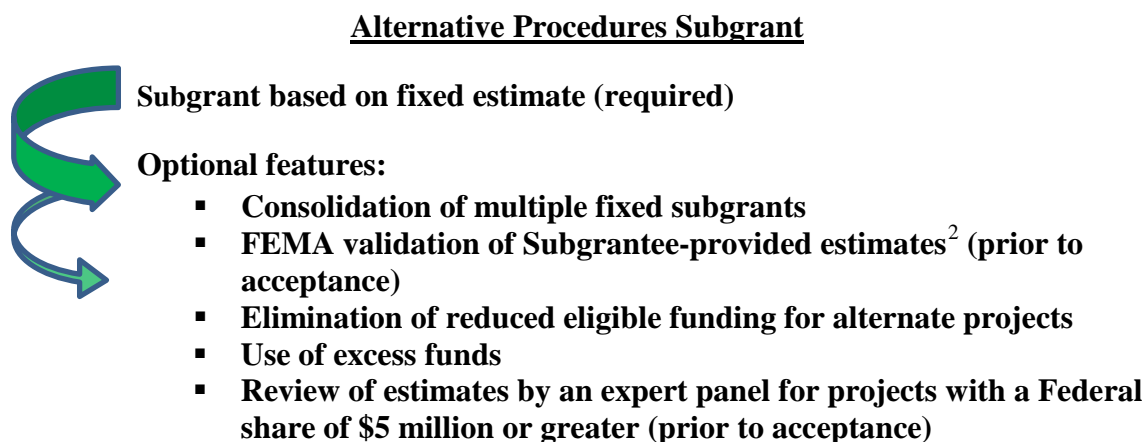
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## PART II. PERMANENT WORK ALTERNATIVE PROCEDURES

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 these 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 estimate (exceptions noted) 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.

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<sup>2</sup> 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.

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## ***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 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 EHP 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 prior to 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 Subgrantee agree on the damage description, scope of work and cost estimate, FEMA 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. (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.

#### ***Fixed Estimate Subgrants***

- Subgrants based on fixed estimates are similar to improved/alternate projects. They provide Subgrantees with 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. While pre-disaster function, design, capacity and condition determine the

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amount of FEMA eligible funding, a Subgrantee is not constrained from using this funding to complete a project with a different function, design or capacity. If a Subgrantee wishes to use any of the funds towards an alternate project, it must notify FEMA at the same time it determines how the funds will be used. The Subgrantee may not request an alternate project after it completes the scope of work on a fixed subgrant and determines it has excess funds. Excess funds are limited to the purposes described in the **Use of Excess Funds** section.

- 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.

The following scenario illustrates the concept.

A county road crosses a water course and its adjacent floodplain, using five (5) 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 (5) 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 (1) bridge.

#### Actual Costs

- If the actual costs are more than the approved fixed estimate 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 estimate 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***

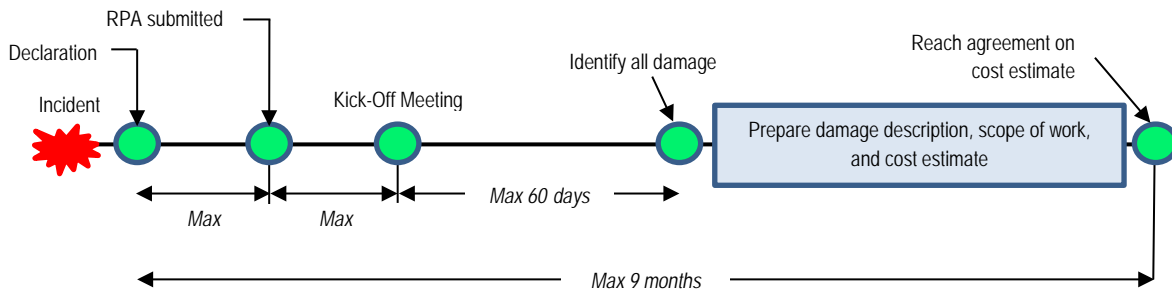
The alternative procedures do not change the regulatory timeline for identifying disaster damage, nor do they change PA Program guidance for the timing of kickoff meetings. To achieve the goal of expediting assistance to Subgrantees, agreement on the cost estimate of the fixed subgrant must be reached within nine (9) 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 May 20, 2013, agreement on the cost estimate of the fixed grant must be reached by February 19, 2014.)



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

**Figure 2. Timeline for preparing permanent work fixed estimate subgrants.**



### ***Preparation of Cost Estimates***

Either FEMA or the Subgrantee may prepare estimates for fixed 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.<sup>3</sup> Although FEMA will accept and use an estimate prepared by a Subgrantee as the basis for approving a subgrant, FEMA is required to ensure that the estimate complies with PA Program requirements. Specifically, FEMA will ensure that the estimate does not contain items that are not consistent with the damage description or approved 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.

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<sup>3</sup> FEMA also accepts Subgrantee-provided estimates for subgrants under standard procedures.

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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***

FEMA will provide funding for preparing the cost estimate in accordance with PA Program requirements. These costs can be based on the actual costs for the engineering and design work or a percentage of the eligible cost for the restoration.<sup>4</sup> FEMA will not provide funding for subsequent planning and design costs for improved projects, alternate projects, or consolidated subgrants into a single subgrant.

If a facility requires an engineering analysis to determine the cause of damage or the methods of repair, FEMA may prepare an initial 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. FEMA will review the estimate and determine its appropriateness as the basis of initial funding that may result in the Subgrantee accepting a fixed grant based on an estimate.

### ***Direct Administrative Costs***

Direct Administrative Costs (DAC) are costs the Subgrantee incurs for site assessments, preparing the disaster-damage dimensions and description, and developing the scope of work for the subgrant estimate. The DAC are considered part of the overall estimate and the identified scope must adhere to criteria set for in policy. No additional DAC will be considered at the subgrant's closeout; as a result, estimated reasonable DAC must be identified and included in the fixed estimate at the time of acceptance.

### ***Review of Estimates by an Expert Panel***

Subgrantees may request a FEMA-funded,<sup>5</sup> 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.

- 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.

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<sup>4</sup> Refer to Factor H in the CEF for information regarding this percentage.

<sup>5</sup> The expert panel will be fully funded by FEMA and does not require any non-Federal cost share.

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- 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.
  - In cases where the estimated amount deemed appropriate by the Expert Panel is less than the Subgrantee is willing to accept for a fixed estimate, it may reverse its decision to apply the alternative procedures to that subgrant. In these cases, FEMA will obligate the subgrant based on the estimated amount determined by the Expert Panel and final funding will be based on actual costs in accordance with Title 44 CFR 206.205 (b).

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 Subgrants***

A consolidated subgrant is created when a Subgrantee combines two or more fixed subgrants into a single subgrant. This feature is intended to allow the Subgrantee greater flexibility<sup>6</sup> 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 fixed subgrants. FEMA will not obligate additional funds if the Subgrantee's costs exceed the aggregate fixed amount. 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 subgrants. Subgrantees may also share funding across any of the facilities within the consolidated subgrant in order to meet its post-disaster recovery needs. Nonetheless, the consolidated subgrant must

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<sup>6</sup> 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.

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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.

- The Subgrantee operates a school campus adjacent to a river. During the disaster, the river floods four nearby buildings. FEMA, the 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 estimate 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 (4) subgrants, one (1) 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 (4) 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 (4) subgrants be consolidated under one (1) single subgrant.
- 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. 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 (4) facilities, restore the remaining six (6), open a new facility in a different location, and construct an administrative building and a community center. As a result, the Subgrantee requests to consolidate the total amount of funding for all 10 fixed subgrants to a single subgrant, to be applied to restoring six (6) buildings and constructing two (2) new buildings.

### ***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 may use the consolidated funds for repair, restoration, or replacement of disaster-damaged facilities; construction of new facilities; repair or replacement of disaster-damaged equipment; or buying new equipment.

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- 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 share consolidated funds among any of the facilities or sites that are part of the consolidated subgrant.
  - 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.
  - Once a Subgrantee requests to consolidate subgrants, 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 to the consolidated subgrant adding the additional fixed subgrant and adjust the aggregate fixed-grant amount. These requests for consolidation must occur within 12 months of the declaration.
  - In cases where a Subgrantee may decide, prior to obligation, that a consolidated subgrant is preferred, in the interest of efficiency the consolidated subgrant can be defined during project formulation (i.e., the facilities being consolidated do not need to be prepared separately, approved, and then consolidated). However, the basis of fixed funding is derived from the eligible scope of work to restore the original damaged facilities to their pre-disaster condition, not the anticipated scope of the proposed use of funds on the consolidated subgrant.

### ***Funding Limits for Consolidated Subgrants***

The limits of funding for any consolidated subgrant are defined by the total fixed subgrants combined into the single consolidated subgrant. It is possible that the fixed estimates for the consolidated subgrant will include funding for approved section 406 Hazard Mitigation. Use or retention of such hazard mitigation funds may be retained at FEMA's discretion when the Subgrantee chooses to add scope of work to replace or relocate a facility as described in the **Special Considerations Review** section.

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### **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.

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)
- 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

When the Subgrantee has completed a fixed subgrant for less than the estimate they must certify final costs within 90 days of project completion through the Grantee for final reconciliation by FEMA. As part of this request the applicant must also provide information for intended use of the excess funds, to include the scope of work and project timeline. FEMA will take action to

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close the original subgrant and then prepare a new subgrant to document the use of the eligible excess funds and conduct all required reviews prior to obligation. Obtain-and-maintain requirements for insurance apply to work funded with excess 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. FEMA will conduct additional EHP compliance reviews when fixed subgrant funds (either single or consolidated) are used under these procedures for changes in scope of work that do not substantially conform to the pre-disaster design, function and location of the damaged facilities. The Grantee will notify FEMA of the proposed work and FEMA will determine whether additional EHP review must be conducted to ensure compliance before construction begins. In some instances, no further EHP review will be required for certain actions.

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 subgrants 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.

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## ***Mitigation***

Section 406 hazard mitigation funds are discretionary funds that can be added to project funding for the repair of disaster-damaged facilities and must prevent future damage similar to that caused by the declared event. Under standard PA procedures, 406 mitigation funds cannot be retained on alternate projects or improved projects that involve relocation or facility replacement at same site. In an effort to promote greater flexibility in the use of funds after accepting a fixed grant and allow more resilient mitigation with the alternative procedures authorized under Section 428, FEMA may allow the retention of 406 mitigation funds in the aforementioned circumstances on a case-by-case basis where prevention of future similar damage is proven to be of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the agreed upon fixed subgrant(s).



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## PART III. GRANTS MANAGEMENT REQUIREMENTS

The process for monitoring and closing subgrants is streamlined under the alternative procedures. The sections below outline grant 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.
- Subgrants under alternative procedures are also subject to Strategic Funds Management (SFM), as appropriate, as outlined in guidance for the SFM initiative.
- 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, as would normally be required in the standard program. The final report should include the following components:
  - Actual work completed with fixed-grant funds
  - Mitigation measures achieved, if applicable
  - Compliance with EHP conditions
  - Total actual costs to complete the project
  - Compliance with Federal procurement procedures
  - Actual insurance proceeds received by Subgrantee

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## ***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 Subgrantee may request that any excess funds be included in a new subgrant, for 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. However, FEMA will not approve appeals submitted for additional costs on fixed subgrants.

## ***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 FEMA 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.

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**Public Assistance Alternative Procedures Pilot Program for Permanent Work  
Acknowledgement**

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, our agency understands the following:

1. We plan to participate in the following elements:
  - Subgrants based on fixed estimates, and as the Subgrantee, accept responsibility for costs above the estimate
  - Consolidation of multiple fixed subgrants into a single subgrant
  - FEMA validation of Subgrantee-provided estimates
  - Elimination of reduced eligible funding for alternate projects
  - Use of excess funds
  - Review of estimates by an expert panel for projects with a Federal share of \$5 million or greater
2. The pilot is voluntary, and a Subgrantee may participate in alternative procedures for one or more large project subgrants.
3. If the Subgrantee accepts a fixed subgrant estimate, the Subgrantee understands they are responsible for all costs greater than the fixed amount.
4. The Subgrantee agrees to notify the Grantee regarding the specific 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 cases where new scopes of work would require EHP compliance, before the subgrant scope of work is implemented. Failure to comply with this requirement may lead to loss of federal funding.
8. The Subgrantee may submit appeals in accordance with 44 CFR§206.206. However, FEMA will not consider appeals solely for additional costs on fixed subgrants.

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Signature of Subgrantee's Authorized Representative

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Date

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Printed Name and Title

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Subgrantee Name

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PA ID Number

- We elect to **not** participate in the Alternative Procedures for Permanent Work.

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**FIXED COST AGREEMENT LETTER**

DATE: \_\_\_\_\_

To Address:

To FEMA:

As a Public Assistance (PA) Subgrantee \_\_\_\_\_  
(PA ID \_\_\_\_\_), in accordance with Section 428 of the Robert T. Stafford  
Disaster Relief and Emergency Assistance Act, we agree to accept a permanent work subgrant  
based on a fixed estimate in the amount of \$\_\_\_\_\_ for subgrant number  
\_\_\_\_\_ (copy attached) under Disaster #\_\_\_\_\_. We accept responsibility for all costs  
above the fixed estimate.

We understand that by participating in this pilot program we will be reimbursed for allowable  
costs in accordance with 44 CFR § 13.22(b) – “Applicable cost principles”, the reimbursement  
will not exceed the fixed estimate. We also understand that by agreeing to this fixed estimate,  
we will not receive additional funding related to the facilities or sites included in the subgrant.  
We also acknowledge that failure to comply with the requirements of applicable laws and  
regulations governing assistance provided by FEMA and the PA alternative procedures pilot  
program guidance (such as procurement and contracting; environmental and historic preservation  
compliance; and audit and financial accountability) may lead to loss of federal funding.

\_\_\_\_\_  
Signature of Subgrantee’s Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature of Grantee’s Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title