



Public Assistance Alternative Procedures (Section 428)

Permanent Work Guide

FEMA-4340-DR-VI

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FEMA

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1. Overview

On June 20, 2018, Governor Kenneth E. Mapp informed the FEMA Administrator by letter that the Government of the United States Virgin Islands (USVI) “intends to utilize the Public Assistance Alternative Procedures Pilot Program for Permanent Work (PAAP), authorized under Section 428 of the Stafford Act, to the greatest extent practicable for recovery related to both Hurricanes Irma and Maria.”

In a letter to USVI dated October 30, 2019, FEMA confirmed it would formulate all large permanent work projects as PAAP projects and provide Applicants the opportunity to reject the applicable Fixed-Cost Offer. Projects for which a Fixed-Cost Offer is accepted by an Applicant will be processed under PAAP; projects for which a Fixed-Cost Offer is not accepted will be processed under standard PA policies and procedures. The processes and timelines for developing cost estimates and accepting Fixed-Cost Offers are described in **2.B. Cost Estimates and Fixed-Cost Subawards** of this document.

While participation in PAAP is voluntary, USVI and FEMA are committed to maximizing the use of PAAP. The procedures in this guide are alternatives to FEMA’s standard PA procedures set forth by Section 406 of the Stafford Act and funded based on Title 44 Code of Federal Regulations (CFR) §206.225(b).

A. Purpose of the Guide

This document provides guidance to FEMA, the Recipient, and Subrecipients for implementing PAAP for permanent work under FEMA-4340-DR-VI. 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 PAAP affects. FEMA field staff will develop procedures for implementation in consultation with USVI.

This version of the guide supersedes the previous version (V2) published in September 2019. It has been updated to better align with national guidance for the PAAP Pilot Program for Permanent Work and to ensure consistent application of PAAP across all disasters. Changes in this version of the guide include:

- A provision to allow FEMA to verify/validate Applicant-provided cost information and estimates;
- Updates to the composition of the Independent Expert Panel; and
- Corrections to address various typographical errors from the previous guide (V2).

B. Applicability

Any governmental component of USVI, including autonomous and semi-autonomous entities, and owners or operators of an eligible private nonprofit (PNP) facility may participate in PAAP on a voluntary basis. The alternative procedures included in this guide apply to Public Assistance (PA) funded large permanent work projects¹ under FEMA-4340-DR-VI for which USVI or a Subrecipient elects to participate. All other PAAP Pilot Program for Permanent Work guides are not applicable under FEMA-4340-DR-VI.

¹ For disasters declared during FY 2017, including FEMA-4340-DR-VI, the large project threshold is \$123,100.00.

C. Definitions

For consistency and clarity, the following terms used throughout this guide are defined below:

- The **Recipient** refers to the Government of USVI.
- The term **Subrecipient** refers to an agency of the Government of the USVI or an eligible PNP organization² receiving a PA subaward for eligible work.
- Eligible permanent **work** necessary to repair, restore, or replace a disaster-damaged facility is used to develop a **project**.
- **Cost estimates** are developed for eligible **work** which is used to transmit a **Fixed-Cost Offer** to the Recipient or Subrecipient which can be accepted or rejected. The **cost estimate** associated with an accepted **Fixed-Cost Offer** is the fixed estimate for that **project**.
- The agreed-upon **cost estimate** is fixed and used to create a **fixed-cost subaward**. The **fixed-cost subaward** is the mechanism through which PA grant funds are obligated for the completion of eligible work.
- All fixed-cost subaward funding for the Recipient and any Subrecipient that opts in is **consolidated** and can be used across all PAAP permanent work projects of the Recipient or Subrecipient.
- **Mitigation** means any cost-effective measure which will reduce the potential for future damage to a facility from a disaster event.³
- A **mitigation project** is a logical grouping of any mitigation measures or actions proposed to reduce risk of future damage from disasters.
- **Excess funds** exist when the final actual cost of the work under all of the Recipient's or a Subrecipient's fixed-cost subawards is less than the cost estimates used as the basis for the fixed-cost subawards. **Excess funds** are discussed in **2.D.3. Use of Excess Funds**.

Other commonly used PA terminology is defined in 44 CFR Part 206, Subparts G and H, as well as Version 3.1 of the PA Program and Policy Guide (PAPPG).⁴

D. Alternative Procedures for Permanent Work

Section 428 of the Stafford Act identifies these goals for the alternative 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, territorial, or local government, or owner or operator of an eligible private nonprofit facility; and
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

To achieve these goals and to support outcome-based recovery, FEMA will work with the Recipient and Subrecipients to develop and reach agreement on fixed-cost estimates for PAAP projects within the National Delivery Model framework for Public Assistance utilizing Grants Manager, Grants Portal, and the Consolidated Resource Center (CRC). FEMA, the Recipient, and/or Subrecipients, where appropriate, will:

² As defined at 42 U.S.C. § 5122(11).

³ As defined at 44 CFR 206.201(f).

⁴ www.fema.gov/media-library/assets/documents/111781

- Identify damaged facilities;
- Capture undamaged elements for Section 404 hazard mitigation considerations as described in **2.C.1. Hazard Mitigation**;
- Complete site inspections and assessments;
- Develop and agree to damage descriptions and dimensions (DDD);
- Identify the application of industry standards pursuant to the Bipartisan Budget Act of 2018 (BBA)⁵ and applicable consensus-based codes, specifications, and standards pursuant to Section 1235(b) of the Disaster Recovery Reform Act of 2018 (DRRA);⁶ and
- Develop and agree to scopes of work (SOWs) and cost estimates to repair, restore, or replace eligible facilities including Section 406 hazard mitigation proposals (HMPs).

To expedite recovery and PA program delivery to the extent possible, FEMA will, concurrent with the above programmatic processes, work with the Recipient and Subrecipients to:

- Identify and develop SOWs for improved and alternate projects;
- Identify mitigation opportunities that can be funded under Section 406 of the Stafford Act and leveraged with Section 404 Hazard Mitigation Grant Program (HMGP) funding;
- Include Environmental and Historic Preservation (EHP) considerations in project formulation and perform compliance reviews; and
- Perform insurance reviews to determine anticipated or actual proceeds and identify potential duplication of benefits.

F. Compliance with Applicable Laws, Regulations, and Policies

Section 428 of the Stafford Act authorizes FEMA to waive notice of rulemaking procedures that would otherwise be required to implement PAAP. 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); §206.203(d)(2)(ii) and (iii); §206.204(e); §206.205(b); and §206.206.

Section 406 maximizes FEMA's ability to support and encourage hazard mitigation under the PA Program. All hazard mitigation proposals under alternative procedures must be designed using the best available flood hazard data and in compliance with applicable regulations and policy. Mitigation review must be completed prior to obligation of funds including any proposed changes in the approved scope of work and prior to the start of construction for those changes. Furthermore, this guidance does not change Section 404 and its application.

Other than the exceptions noted above, all other statutory and regulatory requirements, and policy guidance of the PA Program apply to the alternative procedures. All other federal requirements, including EHP laws, regulations, and executive orders also apply to alternative procedures subawards. EHP review must be completed prior to obligation of funds. EHP review must also be completed for any proposed changes in the approved scope of work and prior to the start of construction for those changes.

⁵ FEMA's policy on implementing the BBA is located on the FEMA website at: www.fema.gov/media-library/assets/documents/170544.

⁶ FEMA's policy on consensus-based codes and standards pursuant to Section 1235(b) of DRRA is located at: www.fema.gov/media-library/assets/documents/184615.

2. Permanent Work Alternative Procedures

FEMA will fund all large permanent work projects for which the Recipient or any Subrecipient elects to accept a fixed estimate under the alternative procedures. This procedure varies from that described in 44 CFR §206.203(c)(1), which provides for funding the actual cost of completing the eligible scope of work. If eligible work has already started, but the restoration has not been completed, the fixed-cost estimate must be based on the current phase of design or construction inclusive of any known costs. If a significant amount of eligible work is completed, or if bids have been accepted but not made available for use in development of an appropriate cost estimate, the project will not be eligible for PAAP and will be processed using standard PA policies and procedures. FEMA review for compliance with EHP laws, executive orders, and other regulations must be completed before funding is obligated and when changes are made to the SOW.

PAAP for permanent work under DR-4340-VI will:

- Allow for making awards for permanent work projects on the basis of fixed estimates to provide financial incentives for the timely and cost-effective completion of work. The Recipient or Subrecipient is responsible for actual costs that exceed the estimate.
 - The CRC will develop the SOW and associated cost estimates based on the agreed-upon DDD and method of repair (MOR) for use in the development of fixed-cost subawards; the CRC may validate cost information provided by Applicants in the development of fixed-cost estimates.
 - Upon completion of the SOW and cost development or validation, FEMA will transmit a Fixed-Cost Offer within Grants Manager/Portal to the Applicant for acceptance. The Recipient or Subrecipient, as appropriate, will either accept or reject the Fixed-Cost Offer in Grants Manager/Portal as described in **2.B.2. Timeframes for Accepting Fixed-Cost Offers**.
- Include the use of a FEMA-funded, third-party independent expert panel to review cost estimates and projects as described in **2.B.3. Independent Expert Panel**.
- Allow Section 406 mitigation funds to be included in the fixed-cost subaward if the recovery measures implemented include reduction of risk from future similar damage as described in **2.C.1. Hazard Mitigation**.
- Allow for the consolidation of funds across all the facilities associated with agreed-upon fixed-cost estimates of a Recipient or Subrecipient based upon the agreed-upon cost estimates.
- Allow the Recipient or Subrecipient to use all or part of any excess funds for cost-effective activities that reduce risk of future damage, hardship or suffering from a major disaster, and/or other activities that improve future Public Assistance operations or planning.

The Recipient and Subrecipients will have the flexibility necessary to formulate projects and fund those projects with fixed-cost subawards based on their recovery goals. As discussed above, all fixed-cost subaward funding for the Recipient and any Subrecipient is considered consolidated and can be used across all PAAP permanent work projects of the Recipient or Subrecipient.

In the event that project funding from fixed-cost subawards is proposed to come from multiple legal entities, FEMA will permit a Subrecipient with the legal responsibility to conduct permanent work on the facility or facilities to transfer that responsibility to an eligible Subrecipient that will perform the work to complete the proposed project.⁷ In order to transfer legal responsibility, the Subrecipients must enter into a Memorandum of Understanding (MOU) or other instrument in accordance with the laws of the U.S. Virgin Islands. The MOU, or other instrument, must demonstrate an unbroken chain of legal responsibility for repair to the facility or facilities between eligible Subrecipients from the time of the declared event to project closeout.

⁷ This does not include private nonprofit Subrecipients.

Project formulation is a transparent and collaborative process between FEMA, the Recipient, and Subrecipients. It includes agreeing to and submitting DDDs to the CRC to determine eligible SOWs and develop cost estimates. The CRC may also validate Applicant-provided SOWs and cost estimates. Project formulation also includes coordination with Section 406 Hazard Mitigation staff to identify 406 HMPs and develop cost estimates specific to each approved HMP.

The PA National Delivery Model framework allows for a genuinely collaborative effort, rooted in a foundation of professional partnerships in the field, the CRC, and at the leadership level. It is critical to an efficient and effective project formulation operation. Collaboration requires the personnel responsible for project formulation to work together in full transparency within Grants Manager and Grants Portal, along with meetings and phone calls to maintain open communication, and leverage the technical specialty of each individual involved throughout project formulation, and make substantial effort to reach concurrence on a fixed-cost estimate.

FEMA will collaborate with Subrecipients and those professional architects and engineers hired by Subrecipients to develop plans and specifications for reconstruction and utilize local engineering reports to inform the development of DDDs. CRC staff will then develop SOWs, HMPs, and cost estimates based on Applicant-signed DDDs; the CRC may validate cost information provided by Applicants in the development of cost estimates. The project development team will not typically wait until engineering reports, designs, plans, specifications, or other technical documents are finalized to complete project formulation, but will utilize such technical information when available or can be developed within the project formulation timeline.

FEMA will utilize highly qualified cost estimators, engineers, architects, and other technical professionals during the project formulation process in the field and CRC. FEMA will use professionals with extensive applicable experience for the sector and/or facility types being assessed and cost estimates developed.

The FEMA review process within Grants Manager will support communication and collaboration through both Grants Manager and Grants Portal. Although different administrative processes exist for disagreements in the development of DDDs and SOWs (e.g., appeals) and cost estimates (e.g., the Expert Panel), the PA National Delivery Model workflow naturally allows for visibility and continual collaboration during all phases of project formulation.

A. Damage Description and Dimensions (DDD), Scope of Work (SOW), and Hazard Mitigation Proposal (HMP)

Alternative procedures use a fixed-cost subaward to fund the work to repair, restore, or replace the disaster-damaged facility, including eligible costs for HMPs and BBA provisions for critical facilities. To identify the eligible costs to be included in the fixed-cost subaward, FEMA, the Recipient, and Subrecipients must first identify all disaster-related damages; document the DDD; determine eligibility; submit the Applicant-signed DDD to the CRC for the development of the SOW and cost estimate for the repair, restoration, or replacement of the facility; and reach an agreement on the cost estimate. The CRC may also validate cost information provided by Applicants in the development of fixed-cost estimates.

FEMA provides assistance to restore facilities on the basis of pre-disaster design and function in conformity with current applicable codes, specifications, and standards.⁸ Repairs and new construction that trigger upgrade requirements as established by federal, state, and local codes and standards are eligible if they meet the criteria in 44 CFR 206.226(d) and the PAPPG, Section VII. B, Codes and Standards.

⁸ 44 CFR §206.226(d).

Additionally, in accordance with FEMA’s policy on Required Minimum Codes and Standards, if a building is eligible for repair, replacement, or is being constructed as an improved or alternate project, FEMA generally requires that the Subrecipient incorporate the natural hazard-resistant codes and standards and related provisions referenced in the most recent published edition of the International Code Council’s (ICC) International Building Code (IBC), International Existing Building Code (IEBC), or International Residential Code (IRC) into the building design and construction. In order to simplify application of this policy, general application of these codes, rather than limited application of only the hazard-resistant provisions to the eligible repair or replacement scope of work is eligible. These codes and standards must apply to the type of restoration required (e.g., repair or construction), be appropriate to the pre-disaster use of the facility, and be reasonable.

HMPs will only be considered based on the actual recovery solution to be implemented. If the recovery solution results in reduction of risk to the function of a damaged facility, 406 mitigation costs may be eligible and included in the fixed-cost subaward. The eligible 406 mitigation SOW will be limited to that which is necessary to reduce risk to the original function at the pre-disaster capacity. The alternative procedures do not change the PA eligibility requirements for applicants, facilities, or work. FEMA’s eligibility determinations and documentation of the DDD, SOW, and HMP must be in accordance with PA program regulations, policy, and guidance.

For all PAAP projects, any disagreement on the DDD, SOW (including HMPs and BBA), or cost must be resolved prior to accepting a Fixed-Cost Offer. For FEMA-4340-DR-USVI, FEMA and the Recipient have developed a joint dispute resolution process to address disagreements on DDDs, SOWs, and/or cost estimates. With the exception of BBA-related determinations as described in **3.C. Appeals**, if agreement cannot be reached on the DDD, SOW, and/or cost estimate for a PAAP project within the timeframes described in **2.B.2 Timeframes for Accepting Fixed-Cost Offers**, that project will be processed using standard PA policies and procedures.

B. Cost Estimates and Fixed-Cost Subawards

Cost estimates for eligible SOWs will serve as the basis for fixed-cost subawards. Subawards developed using PAAP may be used to:

- Restore the pre-disaster design and function of some or all of the separate sites or facilities contained within the Recipient or Subrecipient's eligible projects; OR
- May be used for a fundamentally different concept within the parameters of this guidance.

The total amount of funding to restore the Recipient or Subrecipient's eligible facilities is based on the aggregate of all accepted Fixed-Cost Offers. The amount of funding provided will not be adjusted with the exception of insurance adjustments as described in **2.C.3. Insurance Review**, adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**, or the outcome of a BBA-related appeal as described in **3.C. Appeals**.

Other than the circumstances described above, if the final actual costs are more than the approved fixed-cost estimate, FEMA will not approve additional funds. If final actual costs are less than the fixed amount, the Recipient or Subrecipient may use the excess funds for the purposes described in **2.D.3. Use of Excess Funds**.

B.1. Developing Cost Estimates

After FEMA, the Recipient, and the Subrecipient, through coordination in Grants Manager/Portal, have agreed to the DDD, and the Applicant has signed and submitted the DDD, the CRC will develop the project SOW, as well as any associated HMP and/or BBA SOW, in Grants Manager and develop the cost estimate for the

eligible permanent work associated with the project. FEMA will then transmit the Fixed-Cost Offer in Grants Manager/Portal for acceptance. Once a Fixed-Cost Offer is accepted, the associated project will be processed under PAAP in accordance with this guide; if the Fixed-Cost Offer is rejected or otherwise not accepted within the timeframes described in **2.B.2. Timeframes for Accepting Fixed-Cost Offers**, the associated project will be processed using standard PA policies and procedures. Additional considerations related to the development of cost estimates are provided below:

- The CRC may also validate cost information provided by Applicants in the development of fixed-cost estimates.
- Applicant-submitted estimates must comply with Chapter 3.II.D of the PAPPG. FEMA will evaluate Applicant-submitted estimates using the *Public Assistance: Reasonable Cost Evaluation Job Aid*. This Job Aid includes a checklist in Appendix A: *Validation of Applicant-Provided Cost Estimates*, which FEMA will use to review and validate cost estimates.
- The estimate must be based on the current phase of design or construction inclusive of any known costs.
- If eligible work has been completed at the time the cost estimate is developed, that portion of the fixed amount will be based on the actual cost;
- The cost estimate must include a reduction to account for any anticipated insurance proceeds based on the Applicant's insurance policy, or if known, the actual insurance proceeds.

Cost estimates may be subject to validation by an independent expert panel as described in **2.B.3. Independent Expert Panel**. The project formulation process is designed to be collaborative, with input from the Recipient, Subrecipients, FEMA, and, if necessary, the expert panel.

Allowable costs for the estimate include:

Architectural, Engineering, Environmental Review, and Design Fees

- If a project is sufficiently complex to require an architectural, engineering, or environmental analysis, FEMA will fund such analysis in an initial subaward. The subaward will describe the parameters of the analysis and will be based on a cost estimate for the work. This estimate will ultimately be included in a fixed-cost subaward for the associated project.
- FEMA will also include design fees for services necessary to complete the restoration project SOW in the cost estimate. FEMA will not include additional funding in the cost estimate for architectural, engineering, and design fees associated with any improvements or alternate project scopes of work.

Construction and Other Restoration Costs

- FEMA will include all eligible construction costs or other costs necessary to complete the eligible SOW, including required permitting fees.
- FEMA will also include funding for necessary project and/or construction management services associated with the eligible work in the cost estimate.
- FEMA will also include, as appropriate, funding for:
 - Codes, specifications, and/or standards or industry standards;
 - Any applicable consensus-based code, specification, and/or standard that the Applicant identifies for the facility; and/or
 - Any approved industry standard as applicable under the BBA.

406 Hazard Mitigation

- Approved mitigation proposals will be captured within the fixed-cost subaward as a discrete fixed-cost estimate and must be based on the actual recovery solution to be implemented. This agreed-upon hazard mitigation scope of work and fixed estimate is separate from its associated repair project and estimate. For more information on 406 Hazard Mitigation, see section **2.C.1. Hazard Mitigation**.

PA Management Costs and Direct Administrative Costs

- PA management costs and Direct Administrative Costs (DAC) will be captured on a separate Category Z PW for the Recipient and any Subrecipient that elects to receive management cost contributions through the PA Management Costs Interim Policy⁹ or the DAC Pilot.¹⁰
- Otherwise, an estimated amount of DAC will be included in the fixed-cost estimate. DAC includes costs the Recipient or Subrecipient incurs for each project for site inspections; developing the DDD, SOW, and HMP; reviewing cost estimates developed by FEMA; preparing correspondence; collecting, copying, filing, or submitting documents to support the costs claimed; and requesting disbursement of PA funds.

In line with the goals of PAAP (i.e., reducing the cost of providing assistance, expediting assistance, and an agency goal of simplifying assistance), once FEMA, the Recipient, and the Subrecipient agree to the fixed estimate for the subaward, there will be no further adjustment, with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and, if necessary, a one-time adjustment for approved SOW changes associated with 406 Hazard Mitigation Proposals as described in **2.C.1. Hazard Mitigation**. Note that FEMA's CEF includes contingency factors for hidden damage, unforeseen EHP requirements, and other unidentified circumstances.

If the final actual costs are more than the approved fixed-cost subaward, FEMA will not approve additional funds. If final actual costs are less than the approved fixed-cost subaward, the Recipient or Subrecipient may use the Excess Funds for the purposes described in section **2.D.4. Use of Excess Funds** of the Guide.

B.2. Timeframes for Accepting Fixed-Cost Offers

The alternative procedures do not change the regulatory timeline for identifying disaster damage.¹¹ Each time FEMA transmits a Fixed-Cost Offer, the Recipient and Subrecipient will have a combined total of 30 calendar days from the date of FEMA's transmittal of the Fixed-Cost Offer to accept the offer.

The deadline to accept the Fixed-Cost Offer for all PAAP projects under FEMA-4340-DR-VI is March 20, 2020. Any project without an accepted Fixed-Cost Offer by either the 30-day deadline or the March 20, 2020 deadline, whichever comes first, will be processed using standard PA policies and procedures. Subrecipients must submit a project-specific time extension request to FEMA, through the Recipient. Any request for time extensions will be considered and must be submitted on a project-by-project basis. Time extensions to accept Fixed-Cost Offers must be approved by FEMA's Assistant Administrator for Recovery.

B.3. Independent Expert Panel

A FEMA-funded independent panel of cost estimating experts may review fixed-cost estimates. The review will be limited to issues pertaining to the fixed-cost estimate and the panel will not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary.

The expert panel will review cost estimates and repair versus replacement policy calculations (50% Rule) that meet the following criteria, and validate or make adjustments as necessary or appropriate:

- Projects with cost estimates for which the federal share is \$25 million or more;
- FEMA may request the Expert Panel review for any cost estimate;

⁹ www.fema.gov/media-library/assets/documents/174133.

¹⁰ www.fema.gov/media-library/assets/documents/153582.

¹¹ 44 CFR §206.202(d)(1)(ii).

- Applicants may request the Expert Panel to review the cost estimate for any project with an estimated Federal share of at least \$5 million or more; or
- For replacement requests when the replacement estimate used in 50% Rule calculations is greater than \$5 million.¹²

The panel will complete its review before FEMA transmits the fixed-cost offer. It is expected that the expert panel validation will be completed within the timeframes discussed in **2.B.2. Timeframes for Accepting Fixed-Cost Offers.**

C. Special Consideration Reviews

Each project will be reviewed for special considerations including Hazard Mitigation, EHP, and Insurance. These reviews are required before a fixed-cost subaward can be approved and obligated. The actions taken in these reviews for fixed-cost subawards are described below.

C.1. Hazard Mitigation

Section 406 hazard mitigation funds are funds that can be added to projects for the restoration of disaster-damaged facilities and must mitigate future damage similar to that caused by the declared event. Under Section 406 hazard mitigation, funds are based on eligible, technically feasible, and cost-effective mitigation activities proposed to reduce risk to the function of the disaster-damaged facilities. The approved eligible 406 mitigation costs will be captured within the fixed-cost subaward as a discrete SOW and fixed-cost estimate. The 406 mitigation SOW must be based on the actual recovery solution to be implemented. This agreed-upon 406 hazard mitigation SOW and fixed estimate is separate from its associated restoration SOW and fixed estimate; however, it is subject to the same deadlines described above for PAAP projects.

If necessary, a Subrecipient may request a change to the 406 hazard mitigation SOW (i.e., the HMP) after FEMA, the Recipient, and Subrecipient agree on the cost estimate for the initial proposal; however, this may only be done one time and the agreed-upon fixed-cost estimate must be updated and must occur within the respective fixed-cost estimate agreement deadlines. The proposed change will require evaluation by FEMA for eligibility and EHP. As part of the eligibility review, FEMA will evaluate the SOW, technical feasibility, level of protection,¹³ revised cost estimate, and cost effectiveness of the new HMP, and, if approved, will adjust the SOW and cost estimate accordingly.

To achieve consistency and integration between 404 mitigation and 406 mitigation grants, and maximize FEMA's ability to support and encourage cost-effective hazard mitigation, 404 mitigation opportunities may be identified and developed parallel to 406 recovery efforts. When the 404 and 406 mitigation grants apply to the same facility and the 406 hazard mitigation SOW is changed after the fixed-cost subaward has been agreed to, the 404 grant shall be reevaluated in accordance with 44 CFR §206.434.

¹² Repair and replacement estimates used in 50% rule calculations exclude work and costs that may be eligible once FEMA determines whether repair or replacement is eligible. See FEMA's PAPPG for more information.

¹³ "Level of protection" is the specific quantitative or qualitative degree to which the hazard is being protected against in an approved HMP (e.g., flood, wind, fire, etc.). For flood mitigation, this could refer to the percent annual chance of future floods (e.g., 100-year flood / 0.1% chance that dictates a specific elevation in feet/inches usually based on the design flood elevation, plus any additional SLR). For fire mitigation, this could refer to the use of fire-resistant material up to a specific temperature.

C.2. EHP Compliance Review

FEMA will consider natural and cultural resources during development of recovery projects. Early integration of natural and cultural resource considerations during project scoping, formulation, and design will provide efficiencies in the EHP review process. EHP compliance review will proceed as soon as SOWs have been established and agreed upon. This can occur prior to agreement on cost estimates or concurrently, and prior to formally documenting DDDs, SOWs, and HMPs in FEMA's PA system of record.

FEMA will complete the review prior to obligating funds and prior to any construction. Once the project is obligated, FEMA's EHP review process is complete for that obligated project and the Recipient or Subrecipient is responsible for complying with all grant conditions, including obtaining all necessary permits prior to start of construction. Construction includes all actions that have the potential to impact the environment and historic properties, including archaeological resources, and typically includes demolition and site preparation.

If the Recipient or Subrecipient proposes a change in the SOW of an approved project, FEMA will conduct an EHP compliance review of the revised SOW. For some changes in SOW, additional investigations, studies, or surveys may be necessary. In some circumstances for certain actions, no further EHP review will be required. Upon completion of FEMA's EHP review or if no further review is required, FEMA can approve the SOW change.

When FEMA's review of proposed work indicates the need for an Environmental Assessment, Environmental Impact Statement, or remedial actions required by EHP laws, regulations, and/or executive orders, the Recipient or Subrecipient is responsible for conducting work associated with analyses and performing remedial measures necessary to satisfy EHP compliance requirements in accordance with FEMA Directive 108-1: Environmental Planning and Historic Preservation Responsibilities and Program Requirements, and accompanying Instruction on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program Requirements.¹⁴

If the Recipient or Subrecipient intends to use a fixed-cost subaward to pursue an improved or alternate project,¹⁵ but has not yet identified the improved or alternate SOW, EHP will only conduct a cursory review of the original SOW. Notification of the Recipient or Subrecipient's intent to pursue an improved or alternate project will allow FEMA to focus EHP resources and early integration of natural and cultural resource considerations to the actual improved or alternate project. A thorough EHP compliance review will proceed as soon as the improved or alternate project SOW has been formulated and submitted to FEMA.

If the Recipient or Subrecipient does not comply with any of the EHP-related conditions of the subaward, FEMA will deobligate the funding for any non-compliant SOW.

C.3. Insurance Review

FEMA will evaluate insurance coverage for a PAAP project to determine:

- Known actual insurance proceeds for the eligible work; or
- 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 for the disaster-damaged facility. The cost estimate for a fixed-cost subaward will maintain this reduction, even if the Recipient or Subrecipient does not

¹⁴ www.fema.gov/media-library/assets/documents/118323

¹⁵ See 44 CFR §206.203(d).

perform the original SOW. The overall agreed-upon fixed cost will not be revised. The only exception is when actual insurance proceeds differ from the anticipated insurance proceeds. Specifically, if actual insurance proceeds exceed the amount of the reduction based on anticipated insurance proceeds, the Recipient or Subrecipient will have to return to FEMA the difference between those amounts in order to avoid a duplication of benefits under Section 312 of the Stafford Act.

Conversely, if actual insurance proceeds are less than the amount of the anticipated insurance proceeds used to calculate the reduction, and the Recipient or Subrecipient demonstrates that it performed the due diligence required in pursuing all available insurance proceeds, FEMA will increase the fixed-cost subaward to account for the difference between those amounts.

Additionally, under Section 311(b) of the Stafford Act and 44 CFR §206.252(d), the Recipient or Subrecipient is required to obtain and maintain flood insurance in the amount of eligible disaster assistance as a condition of receiving federal assistance. This requirement is inclusive of areas both inside and outside of the Special Flood Hazard Area. For damage caused by disasters other than flood, under Section 311(b) of the Stafford Act and 44 CFR §206.253(b)(1), the Recipient or Subrecipient is required to obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future damage from the types of hazard that caused the major disaster.

D. Use of Funding

Increasing flexibility in the use of funds is a fundamental goal of PAAP and should support greater alignment and integration of FEMA PA with the Subrecipients recovery outcomes. The Recipient or Subrecipient may use funds from the fixed-cost subawards for:

- Repair, restoration, or replacement of disaster-damaged facilities and equipment;
- Construction of new facilities to include land acquisition;
- Purchase of equipment; or
- Measures that reduce future risk.

If funds for 406 mitigation are included in the fixed-cost subaward, the Subrecipient must complete the approved SOW of the HMP in order to retain the 406 mitigation funding.

D.1. Use of Funds within an Approved Project

The Recipient or Subrecipient may use funding from a fixed-cost subaward to complete the approved SOW associated with the project. Under PAAP, the Recipient or Subrecipient may also share funding from a fixed-cost subaward across any of its other fixed-cost subawards and eligible facilities in order to best meet its post-disaster recovery needs.

The following scenario illustrates the concept: Multiple DDDs and SOWs are developed for the restoration of all the Recipient or Subrecipient's facilities and sites damaged by the declared event. Cost estimates are developed and agreed upon for each SOW and used as the basis for fixed-cost subawards. In the course of completing the eligible work associated with each approved project, the Recipient or Subrecipient discovers the actual cost of some projects is less than the fixed-cost subaward and the actual cost of other projects is greater than the fixed-cost subaward. The Recipient or Subrecipient has the flexibility to use funds from some projects to cover some or all of the costs for other projects.

D.2. Use of Funds for an Improved or Alternate Project

The Recipient or Subrecipient may use any of the funds in its subawards toward an improved or alternate project, but it must notify FEMA when it determines how the funds will be used. If the project results in a reduction of risk to the function of a damaged facility, 406 mitigation costs may also be eligible and included in the fixed-cost subaward. The amount of eligible 406 mitigation funding included in the HMP will be limited to that associated with the capacity of the pre-disaster design of the facility. The Recipient or Subrecipient may not request an improved or alternate project after it completes the SOW of a fixed-cost subaward and determines it has excess funds. The use of excess funds is limited to the purposes described in **2.D.3. Use of Excess Funds**. As appropriate, requirements to obtain and maintain insurance apply to alternate and improved projects.

D.3. Use of Excess Funds

When the Applicant has completed the scope of work for less than the fixed amount, it may retain and use the excess funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and activities that improve future PA operations or planning. Allowing Subrecipients to use excess funds is designed to provide the maximum flexibility to use funds in a manner that best meets specific needs for recovery, long-term resiliency, and future preparedness. Examples include, but are not limited to:

- Cost-effective hazard mitigation activities that will reduce future risk of damage to facilities, including facilities not damaged by the declared disaster (provided the facility would otherwise be eligible for PA Program funding in future disasters). Obtain and maintain insurance requirements apply if funds are used toward an insurable facility.
- Conducting or participating in training for response or recovery activities, including Federal grants management and procurement courses.
- Planning for future disaster response and recovery operations. This is inclusive of costs related to developing or updating plans (e.g., debris management, hazard mitigation, and emergency management/operation), preparedness activities, exercises, and outreach.
- Enhancing communication systems.
- Improvements to eligible facilities.
- Improvements to shelter facilities and other emergency management facilities such as Emergency Operation Centers, even if not damaged.
- Alternate projects (e.g., purchase of equipment, supplies, or construction of new facilities including land acquisition).
- Salaries for PA and emergency management staff.
- Future insurance premiums on eligible facilities, including meeting obtain and maintain requirements.

When the Recipient or Subrecipient has completed all of the approved SOWs in all of its fixed-cost subawards for less than the agreed upon aggregate cost estimate, it must submit a request to close its final fixed-cost subaward, certify final costs, and submit a request to use excess funds within 90 days of the end of the final project's completion date or period of performance, whichever is sooner, to the Recipient. The Recipient must submit the request to FEMA within 90 days of the end of the final project's completion date or period of performance, whichever is sooner.

If a Subrecipient has multiple fixed-cost subawards, it must submit a request to close each subaward based on the above timeline, but does not submit a request to use excess funds until its last project funded under a fixed-cost subaward is complete. As part of this request, the Recipient or Subrecipient must also provide information for intended use of the excess funds, to include the SOW and project timeline. FEMA will initiate closure of

the final fixed-cost subaward and prepare a new subaward to document the use of the eligible excess funds and conduct all required reviews prior to obligation.

If a Subrecipient has only one fixed-cost subaward, it must submit its request within 90 days of completion of that subaward or the end of the period of performance of the subaward, whichever is sooner.

As appropriate, requirements to obtain and maintain insurance apply to work funded with excess funds. If the Recipient or Subrecipient does not expend all excess funds within the approved period of performance, FEMA will deobligate the unspent funds.

D.4. Unallowable Use of Funds

Although PAAP allows flexibility for funds to be used for Improved and Alternate Project scopes of work, the funds may not be used for the restoration of facilities or equipment, or to mitigate facilities, not otherwise eligible for PA funding pursuant to Section 406 of the Stafford Act. The funds may also not be used to:

- Meet the local cost share for PA projects or other Federal awards;
- Pay down debts;
- Cover budget shortfalls; or
- Meet operating expenses.

3. Awards Management Requirements

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

A. Award Management Activities

For subawards funded under PAAP, major activities conducted during the Award Management phase are as follows:

- The Recipient or Subrecipient must complete work within established regulatory timeframes and request time extensions as appropriate.
- The Subrecipients must submit quarterly progress reports to the Recipient for large projects in which the work is not completed and financially reconciled.
- The Recipient will provide funds to Subrecipients in accordance with Federal¹⁶ and Territory requirements.
- Subawards under alternative procedures are also subject to Strategic Funds Management (SFM), as appropriate, as outlined in guidance for the SFM initiative.
- The Recipient will ensure that Subrecipients understand and adhere to Federal procurement requirements, as well as other requirements of 2 CFR Part 200.
- The Recipient will ensure Subrecipient compliance with EHP requirements, notify FEMA of work requiring EHP compliance reviews, and provide necessary documentation to conduct EHP reviews.

B. Subaward Closure

PAAP subawards may be closed when the approved SOW is completed. Subrecipients will submit to the Recipient a final report of project costs. Review of this report will not result in additional funding for fixed-cost subawards under PAAP, nor a reduction in funding if the Recipient or Subrecipient elects to use excess funds for allowable purposes.¹⁷ The final report should include documentation supporting the following components:

- Actual work completed with fixed-cost subaward funds;
- Mitigation measures achieved, if applicable;
- Compliance with EHP conditions and requirements to obtain insurance;
- Total actual costs to complete the project;
- Compliance with Federal procurement procedures; and
- Actual insurance proceeds received by the Recipient or Subrecipient.

The Recipient will review the final report and provide it to FEMA. The Recipient will certify that all information is accurate and request subaward closure. Based upon the outcome of the financial accounting, the Recipient or Subrecipient may request that excess funds be included in a new subaward, for use within regulatory timeframes and applicable extensions.

¹⁶ Specifically, the Cash Management Improvement Act of 1990 (CMIA).

¹⁷ 44 CFR §206.205(b).

C. Appeals

FEMA will not consider appeals on a PAAP project unless it is related to a BBA determination made by FEMA on the SOW for critical service facilities¹⁸ or a cost adjustment made by FEMA after the Fixed-Cost Offer is accepted (i.e., related to insurance, non-compliance, or an audit). In such cases, the Recipient or Subrecipient may submit an appeal in accordance with 44 CFR §206.206.

Any other disagreement on the DDD, SOW, or cost must be resolved prior to accepting a Fixed-Cost Offer. If agreement cannot be reached on the DDD, SOW, and/or cost estimate for a PAAP project within the timeframes described in **2.B.2 Timeframes for Accepting Fixed-Cost Offers**, that project will be processed using standard PA policies and procedures.

Additionally, time extension denials on any PAAP project are not appealable.

D. Audits and Compliance Reviews

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

¹⁸ In accordance with FEMA Recovery Policy FP- 104-009-5 *Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program (Version 2)* published on September 11, 2019.