

PUBLICATION

FEMA's New Interim Policy Requires Choice on Management Cost Allocations by February 12

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The Disaster Recovery Reform Act of 2018 (DRRA), signed into law on October 5, 2018, is the largest single piece of legislation to impact disaster response and recovery in decades. Among other things, it amends Section 324 of the Stafford Act, which covers management costs – those indirect costs, administrative expenses, and other expenses not directly chargeable to a specific project or mitigation activity. To implement the change, the Federal Emergency Management Agency (FEMA) issued the *Public Assistance Management Costs (Interim) FEMA Recovery Policy FP 104-11-2 (Interim Policy)*, and a clarification on December 19, 2018. The Interim Policy marks a change in funding for management costs under the standard method as outlined in FEMA's Public Assistance Program and Policy Guide (PAPPG) and the more recent Direct Administrative Costs (DAC) Pilot Program (for more information on the DAC Pilot Program, refer to our June and July 2018 alerts). The Interim Policy requires recipients and subrecipients with open projects under disasters or emergencies declared from August 1, 2017 through October 4, 2018 to make a choice regarding the handling of their management costs allocations by **February 12, 2019**. FEMA's Interim Policy changes are summarized below.

Applicability and Required Election

Under amended Section 324, "management costs" include indirect costs, DAC, and other administrative expenses associated with a specific project. For incidents declared on or after October 5, 2018, management costs will be processed only under the Interim Policy. For declarations issued from August 1, 2017 to October 4, 2018, FEMA will allow any recipient or subrecipient to select whether to receive management cost contributions pursuant to the Interim Policy, or receive such funding under management cost and DAC policies in effect at the time the emergency or major disaster was declared (including the PAPPG and DAC Pilot Program options). FEMA's clarification to the Interim Policy, however, confirms this election must be submitted in writing to FEMA by **February 12, 2019**. In cases where FEMA does not receive written notification by this date, and the recipient or subrecipient did not have DAC obligated or previously opt-in to the DAC Pilot Program, FEMA will fund management costs pursuant to the Interim Policy.

Interim Policy Details

For the recipient:

FEMA provides contributions for management costs based on actual costs incurred **up to seven percent** of the total award amount for the disaster or emergency, excluding subrecipient management costs.

The seven-percent rate is inclusive of management costs expended by the recipient **for its own projects**. The recipient **does not** receive an additional five percent for management costs on its own projects.

If a state and tribal government both receive a presidential declaration for the same incident within the same state, or if a tribal government opts to be a recipient under the state declaration, then both are recipients. As such, both are eligible for the seven percent.

For subrecipients, FEMA will provide contributions for management costs based on actual costs incurred **up to five percent** of the subrecipient's total award amount.

Use of Management Funds

Activities eligible as management costs under the Interim Policy include those related to developing eligible PA projects and receiving reimbursement. The Interim Policy includes more information on what these activities include. Of special note, excess management cost funding **may not be retained**.

Other Highlights

- Management costs funding provided under the Interim Policy is provided at **100 percent federal share**. The two prior DAC award programs are subject to the federal cost share applicable to the declaration.
- The five or seven percent award cap is calculated by adding all eligible PA project costs (including the non-federal share) but **AFTER** insurance and any other reductions (donated Resource Project Worksheets (PW) are not included in the five or seven percent calculations). The prior DAC program calculated funding based on amounts prior to insurance reductions.
- In regard to all three programs, DAC need not be tracked by specific project, but the subrecipient must substantiate that the costs are related to eligible work (e.g., payroll data, contracts, invoices, explanation of activities performed) and are reasonable.
- For traditional DAC and DAC Pilot Program processing, only DAC was considered. Under the Interim Policy, management costs includes not only DAC, but also indirect costs and "other administrative expenses associated with a specific project."
- This is an Interim Policy until FEMA publishes a new version of the PAPPG.
- Title 44 C.F.R. Part 207 is no longer effective.

Important Deadline Summary

- Recipients or subrecipients with incidents declared from August 1, 2017 through October 4, 2018 **must submit a written notification to FEMA by February 12, 2019**, confirming whether to keep their current option or utilize this Interim Policy.
- FEMA states that it will be providing an additional policy on documenting and evaluating reasonableness as it specifically relates to management costs; however, there is no indication as to when that policy will be published.

Any recipient or subrecipient presented with the option to continue receiving a prior management costs/DAC award based on standard processing or the prior DAC Pilot Program, or to elect to use the Interim Policy, should carefully weigh the differences of each available option. The programs treat reimbursement amounts and insurance reductions differently. There are also differences in the federal cost share considerations and in whether an entity is allowed to keep excess costs.

For more information or to discuss these changes or other aspects of various federally funded disaster assistance programs, please contact [Ernie Abbott](#), [Wendy Ellard](#), [Danielle Aymond](#), [Michelle Zaltsberg](#), or any of the members of Baker Donelson's [Disaster Recovery and Government Services Team](#).