

PUBLICATION

Update: FEMA Issues Revised Policy on Alternative Procedures for Direct Administrative Costs

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We opened the 2018 hurricane season by issuing an informational alert regarding FEMA's new Alternative Procedures for Direct Administrative Costs (DAC). It appears many stakeholders may have shared our concerns regarding the policy, as, shortly thereafter, FEMA issued a revised policy to refine and clarify the new DAC process. The changes made in Version 1.1 are summarized below.

No Limitation on Underlying PW Versions

As with the previous version of the policy, DAC will be calculated as five percent of the total eligible project costs, rather than actual costs tracked on a project-by-project basis. However, Version 1.1 clarifies that the five percent will be calculated based on the total eligible project costs of project worksheets (PWs) that have been signed and submitted to FEMA within two years of the disaster declaration date (an exception to this deadline is made for projects under the Alternative Procedures Pilot Program for Permanent Work – for those PWs, the five percent is calculated based on the agreed-upon fixed estimate, irrespective of when it is determined). Version 1.1 clarifies that the DAC calculation will not be limited to only costs initially submitted on the underlying PWs (Version 0). As under the previous version of the policy, one percent of the five percent is held by the recipient as a closeout incentive and is only paid to the subrecipient if certain deadlines are met (see below).

Changes to DAC as Costs Underlying the DAC Calculation are Later Approved or Disapproved

Version 1.1 contains new information regarding what will happen to DAC funding if costs are later appealed. Not surprisingly, FEMA reserves the right to deobligate DAC calculated on costs later determined to be ineligible, no matter when that determination is made. However, FEMA will not provide subrecipients the converse opportunity to recover DAC on costs that are initially deemed ineligible but later approved after the two-year anniversary of the disaster declaration date. DAC will be awarded only for costs that are successfully appealed within the two-year deadline.

Quarterly Limitation on DAC PW Versions

The previous policy permitted only four versions of the DAC PW (0, 1, 2, and 3), locking in the subrecipient's DAC reimbursement at the amount of DAC PW Version 3. Version 1.1 removes the limitation on DAC PW versions, but instead provides that subrecipients may request DAC PW obligations no more than quarterly. The final version should be requested once all PWs have been signed and submitted to FEMA, but must be requested no later than two years from the date of the disaster declaration. PWs that have not been signed and submitted to FEMA by this date cannot be submitted to generate additional DAC (with the exception of PWs written under the Alternative Procedures Pilot Program for Permanent Work, as explained above).

The Period of Performance

To earn the one percent closeout incentive retained by the recipient on large projects, the subrecipient must complete the project's scope of work within the project's period of performance (POP) and must submit the project for closeout within 90 days of the POP. For small projects, the one percent closeout incentive is earned when the subrecipient completes the scope of work within the project's POP and submits the closeout package within 90 days of the last small project's POP. If a PW's POP expires prior to obligation, the 90-day deadline is

calculated from the date of obligation. FEMA will deobligate the one percent incentive if the incentive is not earned.

Use of DAC Funds

The subrecipient can use the DAC award on any of its DAC costs for projects, even those that were not included in the DAC PW. DAC funds may not be used to fund administrative costs for ineligible projects, to cover indirect costs, or to cover the non-federal cost share of the DAC PW. Excess DAC funds may be used for:

1. Cost-effective hazard mitigation activities, as long as the mitigation is applied to facilities that would be eligible for public assistance (PA) funding in future disasters; and
2. Activities to improve future PA operations or planning (e.g., developing debris management plans, participating in training for response and recovery, and participating in federal grant management and procurement courses).

The subrecipient must submit a request for FEMA through the recipient for the use of excess funds, identifying the amount, the proposed use, and a project timeline. FEMA will deobligate excess funds that are not associated with an agreed-upon proposal by the 180-day deadline.

Other Highlights

- The effective date of the policy is now two days earlier to coincide with the effective date of the latest version of FEMA's Public Assistance Program and Policy Guide – August 23, 2017.
- The recipient (i.e., the state) must opt in to participate in the program in order for subrecipients (e.g., local governments, tribal governments, private non-profits) to participate.
- Once a subrecipient opts in to the program, it cannot opt out. The subrecipient cannot opt in on an individual project basis – it must opt in for all projects.
- The recipient may disburse DAC funds to the subrecipient upon the subrecipient's request, but the amount disbursed cannot exceed the actual DAC incurred.
- The DAC award is subject to the federal cost share. In the event there are different cost shares for different categories of work or time periods, FEMA will apply the prevailing cost share for Permanent Work.
- 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).

Important Deadlines Summary

- Recipients should decide to opt in to the program prior to the Applicant Briefing and no later than the first subrecipient's request to opt in.
- Subrecipients should advise the recipient and FEMA of participation within **60 days** of the Recovery Scoping Meeting.
- Subrecipients must complete the scope of work for each project **within the project's POP**.
- Subrecipients must submit large projects for closeout within **90 days** of the project's POP to earn the one percent incentive.
- Subrecipients must submit the closeout package for small projects within **90 days** of the last small project's POP.
- DAC PW obligations may be requested no more than **quarterly**.
- The final DAC PW must be requested within **two years** of the date of the disaster declaration.
- DAC will only be adjusted up based on late approvals made or successful appeals decided within **two years** of the date of the disaster declaration.
- Requests to use excess DAC funds must be made to FEMA through the recipient within **180 days** of the DAC PW POP.

Special Considerations for DAC Incurred Between the Old and New Policy Versions (October 25, 2017 – June 12, 2018)

- For DAC obligated on a regular PW before June 12, 2018, FEMA will deobligate the DAC on the PW and add that project's cost to the DAC PW calculation.
- If on or after October 25, 2017 the subrecipient knows the final DAC costs for a project (even where the cost have not yet been submitted to FEMA), it cannot participate in the DAC Alternative Procedures.

For more information on this or other matters, please contact [Ernie Abbott](#), [Wendy Ellard](#), [Michelle Zaltsberg](#), or any of the members of Baker Donelson's [Disaster Recovery and Government Services Team](#).