



Public Assistance Alternative Procedures (Section 428)

Guide for Permanent Work FEMA-4339-DR-PR

February 10, 2020



FEMA

Table of Contents

Table of Contents	2
1. Overview	3
A. Purpose of the Guide	3
B. Terminology Used Throughout this Guide.....	4
C. Applicability	5
D. Sector Coordination and the Recovery Support Functions	5
E. Alternative Procedures for Permanent Work.....	6
F. Compliance with Applicable Laws, Regulations, and Policies	7
G. Relationship with 404 Mitigation (Hazard Mitigation Grant Program)	8
2. Permanent Work Alternative Procedures	9
A. Damage Description and Dimensions (DDD), Scope of Work (SOW), and Hazard Mitigation Proposal (HMP).....	10
B. Cost Estimates and Fixed-Cost Subawards	11
C. Special Consideration Reviews	14
D. Use of Funding	16
3. Awards Management Requirements	19
A. Award Management Activities	19
B. Subaward Closure.....	19
C. Appeals	20
D. Audits and Compliance Reviews.....	20
Appendix A Specific Changes to PA Alternative Procedures for Puerto Rico	21

1. Overview

On October 30, 2017, the Government of Puerto Rico (Recipient) elected to participate in alternative procedures for all large project funding for Public Assistance (PA) Categories C-G, pursuant to Section 428 of the Stafford Act, for permanent work following Hurricane Maria. On October 9, 2019, the Recipient requested that the disaster declaration be amended to allow for Public Assistance Alternative Procedures (PAAP) for Permanent Work to be made optional at the election of the Subrecipient. On January 23, 2020, FEMA made PAAP optional for non-critical service facilities. PAAP is still mandatory for all large permanent work projects for critical service facilities. Additionally, any non-critical service facility projects obligated under PAAP, as of the date of this guide, are still required to participate in PAAP. The deadline for any other non-critical service facility to opt in to PAAP is March 6, 2020. The Recipient must notify FEMA of all non-critical service facilities that will participate in PAAP no later than March 6, 2020. Any non-critical service facility that has not been requested for participation in PAAP by March 6, 2020 will be processed using non-PAAP procedures.

In a letter dated November 2, 2017,¹ the President authorized federal funds for all categories of PA at 90 percent of total eligible costs, except for assistance previously approved at 100 percent.² In accordance with the President's letter, the increased federal cost share is subject to the following grant conditions:

1. The Recipient must establish a Government of Puerto Rico grant oversight authority, supported by third-party experts, to perform as the grant recipient for PA and Hazard Mitigation funding to ensure sound project management and enhanced, centralized control and oversight over the distribution of FEMA grant funds;³ and
2. Hazard Mitigation grant funding available under section 404 of the Stafford Act must be prioritized toward protecting federal investments in Puerto Rico's public infrastructure.

Additionally, the following conditions apply under FEMA-4339-DR-PR:

1. All large project funding for PA Categories C-G where the facility provides a critical service⁴ must be obligated by FEMA only through alternative procedures as FEMA shall establish under Section 428 of the Stafford Act (i.e., PAAP), including third-party independent expert validation of estimates for projects exceeding a threshold FEMA shall establish consistent with the law; and
2. All large projects obligated as of the date of this guide that do not provide a critical service but have accepted a fixed-cost offer must continue to participate in PAAP.

A. Purpose of the Guide

This document provides guidance to FEMA, the Recipient, and Subrecipients for implementing PAAP for permanent work under FEMA-4339-DR-PR. 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.

¹ Published to the Federal Register at www.federalregister.gov/documents/2017/11/16/2017-24908/major-disaster-declarations-puerto-rico-amendment-no-5.

² Non-critical service facilities processed using non-PAAP procedures will receive the 90 percent federal cost share.

³ On October 23, 2017, the Governor of Puerto Rico, ordered the creation of the Central Recovery and Reconstruction Office (CRRO) of Puerto Rico under the authority of the Puerto Rico Financial Emergency and Fiscal Responsibility Act (Act No. 5-2017). The CRRO will act as the grant oversight authority.

⁴ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 20601, 132 Stat. 64 (2018)

FEMA also developed an internal controls document titled *Public Assistance Alternative Procedures (Section 428) Internal Controls Considerations and Assessment Plan*. The purpose of the document is to outline the internal controls related to all FEMA grants to the Recipient following Hurricane Maria for FEMA-4339-DR-PR.

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

- The optional use of 428 PAAP for large permanent work projects for non-critical service facilities;
- The continued required use of PAAP for large permanent work projects for critical service facilities;
- The continued required use of PAAP for any large permanent work project for which a fixed-cost estimate has already been accepted and for which funds have been obligated as of the date of this guide;
- Establishing the deadline to opt in to PAAP for non-critical service facilities (March 6, 2020);
- Updating the processes and timelines to develop and reach agreement on fixed-cost estimates for all PAAP projects;
- Updating the composition and use of the Independent Expert Panel;
- Allowing Applicant-provided cost estimates for validation; and
- Removing language pertaining to the Center of Excellence.

B. Terminology Used Throughout this Guide

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

- The **Recipient** refers to the Government of Puerto Rico.
- The term **Subrecipient** refers to an agency of the Government of Puerto Rico, a municipality, or an eligible private nonprofit organization⁵ 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**. The agreed-upon **cost estimate** for all **work** associated with a **project** 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.
- **Mitigation** means any cost-effective measure which will reduce the potential for damage to a facility from a disaster event.⁶
- 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 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**.
- **Critical Services Facility** is any facility which provides a critical service as defined in Section 406 of the Stafford Act which includes the following services: power; water; sewer; wastewater treatment; communications; education; emergency medical care; and emergency services.⁷
- **Non-Critical Service Facility** is any facility that does not provide a critical service as defined in

⁵ As defined at 42 U.S.C. § 5122(11).

⁶ As defined at 44 CFR 206.201(f).

⁷ See Table 1 of the PAPPG for specific examples of critical versus non-critical services, facilities, and systems

Section 406 of the Stafford Act.

Other commonly used PA terminology is defined in 44 CFR Part 206, Subparts G and H, as well as the PA Program and Policy Guide (PAPPG),⁸ the current version of which was published in January 2018 and is applicable to all emergencies and major disasters declared on or after the date of publication.

C. Applicability

The alternative procedures included in this guide apply to:

- All large permanent work projects for critical service facilities;⁹
- All large permanent work projects for any non-critical service facility for which an Applicant decides to opt in to PAAP by March 6, 2020;¹⁰ and
- All large permanent work projects that have accepted a fixed-cost estimate under PAAP and for which funds have been obligated as of the publication date of this guide.

FEMA may also determine PAAP to be mandatory for facilities where processing through 406 standard procedures will result in administrative disruption, inefficiency, or delay in recovery, and those projects that are ongoing and/or have already been approved to go forward under PAAP.

This guide does not apply to FEMA-4336-DR-PR.¹¹ Previous versions of the PAAP guide for permanent work are not applicable. Major differences between this guide and the PAAP Guide for Permanent Work Version 4, published on August 29, 2019,¹² are provided in Appendix A.

D. Sector Coordination and the Recovery Support Functions

PA funding is a key resource and should be integrated into the broader whole community recovery planning process that will take place in coordination with the Recovery Support Functions (RSF), other Government of Puerto Rico and federal agencies as appropriate, the Recipient, and Subrecipients.

This includes the prioritization of infrastructure by sectors and providing funding for eligible work focused on those identified sectors. FEMA will coordinate with the appropriate Government of Puerto Rico and federal agencies in developing scopes of work, formulating projects, and building resiliency for those sectors.

This also includes leveraging other federal funding authorities such as the Community Development Block Grant for Disaster Recovery (CDBG-DR).¹³

FEMA and the RSFs will work closely with the Recipient and Subrecipients to:

⁸ www.fema.gov/media-library/assets/documents/111781.

⁹ For disasters declared during FY 2017, including FEMA-4339-DR-PR, the large project threshold is \$123,100.00.

¹⁰ FEMA will not accept extension requests for non-critical facilities to opt in to PAAP past the March 6, 2020 deadline.

¹¹ Pursuant to an October 6, 2017 letter from Federal Coordinating Officer Mike Byrne to Governor Ricardo A. Rosselló Nevares titled “FEMA-4336-DR-PR and FEMA-4339-DR-PR Public Assistance Operating Procedures Designating work required by Hurricane Irma versus Hurricane Maria,” any permanent work started before 12:00am on September 17, 2017 will be attributed to DR-4336, using the traditional PA procedures. Any work started after that time, regardless of whether the work was required by Hurricane Irma or Hurricane Maria, will be attributed to DR-4339 and will follow the procedures established in this guide.

¹² www.fema.gov/alternative-procedures.

¹³ www.hudexchange.info/programs/cdbg-dr/.

- Coordinate with public and private sector infrastructure owners and operators and related service providers in planning at all levels;
- Provide technical assistance to all levels of governments for identifying and prioritizing projects for critical infrastructure systems and assets;
- Create an interagency, interjurisdictional recovery planning process;
- Provide adequate federal support and resources to assist the Recipient and Subrecipients with effective recovery planning and redevelopment efforts;
- Encourage the concepts of regional infrastructure resiliency;
- Provide mitigation opportunities that leverage innovative and renewable technologies; and
- Create processes, policies, and timelines that support renewed economic activity.

Utilizing PAAP for permanent work can assist in aligning recovery efforts with the RSF objectives established above. It allows the Recipient and Subrecipients, working with FEMA, to prioritize the provision of funding for eligible permanent work in ways that best meet the recovery needs of impacted communities, provides flexibility in the use of funds, and expedites the delivery of assistance.

The Recipient and Subrecipients will have the flexibility necessary to formulate projects and fund those projects with fixed-cost subawards based on the recovery goals of the Governor and local officials. The Federal Disaster Recovery Coordinator (FDRC) shall have the authority to approve the Recipient's and/or Subrecipients' request to consolidate funding approved under fixed-cost subawards for one Subrecipient with funding approved for another Subrecipient. Such requests are made by the Recipient or Subrecipients through the Recipient. Consolidations may be for one facility, multiple facilities, multiple Subrecipients, or by sector.

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.¹⁴ 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 Puerto Rico. 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.

E. 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 nonprofit 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, FEMA will work with the Recipient and Subrecipients to develop and reach agreement on fixed-cost estimates within the National Delivery Model framework for PA utilizing Grants Manager, Grants Portal, and the Consolidated Resource Center (CRC) for all eligible work under FEMA-4339-DR-PR. The timeline to reach an agreement on the fixed-cost estimates will be dependent on a facility-by-facility basis. FEMA will work with the Subrecipients to develop a facility work plan which

¹⁴ This does not include private nonprofit Subrecipients.

will lay out percent milestones that the facility would meet each quarter for each Phase in the National Delivery Model. In the case that the facility does not meet the milestones laid out in the facility work plan, first FEMA will escalate delays to COR3 leadership to make them aware. If there is continuing underperformance, FEMA will unilaterally move facilities through process or issue an ineligibility determination and allow the Subrecipient to appeal. During this facility work plan timeframe, FEMA, the Recipient, and Subrecipients will:

- Identify damaged facilities;
- Capture undamaged elements for hazard mitigation considerations;
- Complete site inspections and assessments;
- Develop and agree to damage descriptions and dimensions (DDD);
- Identify the application of industry standards pursuant to the Bi-partisan Budget Act of 2018 (BBA)¹⁵ and applicable consensus-based codes, specifications, and standards pursuant to Section 1235(b) of the Disaster Recovery Reform Act of 2018 (DRRA);¹⁶ and
- Develop and agree to scopes of work (SOW) and cost estimates concurrently to repair, restore, or replace eligible facilities including Section 406 hazard mitigation.

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 scopes of work 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 PA 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); §206.203(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 data¹⁷ 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 SOW and prior to the start of construction for those changes. Furthermore, this guidance does not change Section 404 and its application.

¹⁵ FEMA's policy on implementing the BBA is located on the FEMA website at: www.fema.gov/media-library/assets/documents/170544.

¹⁶ 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.

¹⁷ In accordance with the updated version of FEMA Region II Memorandum, dated October 10, 2017, Guidance for the use of Available Flood Hazard Information for the Government of Puerto Rico in complying with FEMA Policy 104-008-2, 44 CFR Part 9, and Executive Order 11988 (Floodplain Management).

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 SOW and prior to the start of construction for those changes.

G. Relationship with 404 Mitigation (Hazard Mitigation Grant Program)

The PA alternative procedures apply to mitigation measures approved under the authority of Section 406 of the Stafford Act to improve the resiliency of disaster-damaged facilities from future, similar damage to the facilities. Alternatively, FEMA's 404 mitigation grants fund mitigation measures under the authority of Section 404 of the Stafford Act to improve the resiliency of either disaster-damaged or undamaged facilities from future events of any kind. FEMA's 404 mitigation grant process works in parallel to the 406 mitigation grant process. FEMA will begin to assist the Recipient in the development of parallel 404 mitigation grant projects as soon as practicable. As noted, for FEMA-4339-DR-PR, hazard mitigation grant funding available under Section 404 of the Stafford Act must be prioritized toward protecting federal investments in Puerto Rico's public infrastructure.

FEMA will evaluate each mitigation opportunity to first determine what measures or portions of solutions could be funded through Section 406 mitigation. Section 406 mitigation should be optimized as this ultimately results in an overall increase in 404 mitigation funding available to Puerto Rico. Mitigation measures found to be ineligible for 406 mitigation, such as those that address undamaged facilities, will then be considered for 404 mitigation funding. In accordance with 44 CFR §206.435(b), Puerto Rico will establish the priorities for the Section 404 mitigation funding. Section 404 funding is distinct and separate from the fixed grant subaward, and will be captured in a discrete application in accordance with the 2015 Hazard Mitigation Assistance Guidance.

2. Permanent Work Alternative Procedures

Under PAAP, FEMA will fund all facilities for which applicants opt in and all critical service facility permanent work large projects on the basis of fixed estimates. This procedure varies from that described in 44 CFR §206.203(c)(1), which provides for funding the actual cost of completing the eligible SOW. For eligible work that has already been completed, the fixed amount will be based on actual cost, which are always subject to cost reasonableness. If eligible work has already started, but the restoration has not been completed, the fixed cost may be based on actual and/or estimated costs as appropriate. FEMA review for compliance with EHP laws, executive orders, and other regulations must be completed before funding is obligated or when changes are made to the SOW.

PAAP for permanent work under DR-4339-PR will:

- Allow for making awards 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. The Recipient or Subrecipient is responsible for actual costs that exceed the estimate.
 - The CRC or Applicant 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; If developed by an Applicant, FEMA will attempt to validate as being reasonable and eligible based on the work required to address the disaster-related damage; if validated, the SOW and cost estimate will be accepted by FEMA and used to form the basis of the fixed-cost estimate.
 - Once agreement is reached on the cost estimate for a project or projects, the Recipient, and, if applicable, the Subrecipient, will accept the Fixed-Cost Offer in Grants Manager.
- 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**.
- Require a third-party independent expert panel to validate any project with a cost estimate for which the federal share is \$25 million or more, or at the request of the Recipient or Subrecipient.
- Allow for the consolidation of funds associated with fixed-cost subawards across all the facilities 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 PA operations or planning.

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

The PA National Delivery Model framework provides 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 to leverage the technical specialty of each individual involved throughout project formulation and make substantial effort to reach agreement on a fixed-cost estimate.

FEMA and the Recipient will work with the Applicant to formulate disaster-related damage into projects

and reach agreement on the eligible SOW for all Permanent Work projects. Once agreement is reached on the disaster-related damage and eligible SOW, FEMA or the Applicant will develop a cost estimate. After the cost estimate is developed by FEMA or developed by the Applicant and validated by FEMA as being reasonable and eligible based on the work required to address the disaster-related damage, FEMA will transmit a fixed-cost offer via its Grants Manager/Portal to the Applicant for acceptance.

During this process, FEMA will collaborate with engineering, technical, and other project formulation professionals representing the Recipient. 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.

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. 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 for the development of the SOW and cost estimate for the repair, restoration, or replacement of the facility; and reach agreement on the fixed-cost estimate. The CRC may validate Applicant-provided cost estimates 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.¹⁸ 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.

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 SOW 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

¹⁸ 44 CFR §206.226(d).

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 critical service facilities, for which PAAP is mandatory, if there is any dispute over the DDD, SOW, HMP,¹⁹ and/or BBA implementation, FEMA will collaborate with the Recipient and Subrecipient to resolve the dispute. If necessary, FEMA and the Recipient will develop a dispute resolution process in accordance with the *Recovery Directorate Manual, Public Assistance Program Appeal Procedures, Version 3* (April 7, 2014).

B. Cost Estimates and Fixed-Cost Subawards

Cost estimates for eligible SOW will serve as the basis for fixed-cost subawards. Fixed-cost subawards 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 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 agreed-upon cost estimates, and the amount of funding provided will not be adjusted with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**.

B.1. Developing Cost Estimates

After the Applicant has signed and submitted the DDD, the Applicant will provide FEMA with information about the MOR. Once FEMA receives the DDD, FEMA will:

- Develop the SOW and any associated HMP and BBA implementation in Grants Manager and develop the cost estimate for the eligible permanent work associated with the project;
- 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 a third-party 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

¹⁹ HMPs may be added to the SOW after agreement on the initial cost estimate is reached but must be agreed to prior to the 18-month deadline discussed in **B.2. Timeframes for Reaching Agreement on Cost Estimates**. Disputes over an HMP must be resolved before a cost estimate incorporating the HMP can be completed.

- ultimately be included in a fixed-cost subaward for the associated project.
- FEMA will also include design fees for services necessary to complete the project SOW in the cost estimate. FEMA will not include additional funding in the cost estimate for architectural, engineering, and design fees associated with an improved or alternate project.
- Construction and Other Restoration Costs
 - FEMA will include all 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 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
 - Section 406 hazard mitigation funds can be added to project funding for the repair of disaster-damaged facilities and must prevent future, similar damage. Effective with the issuance of this guidance, 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 SOW 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 depending on which option the Recipient and Subrecipients elected for receiving management cost contributions (i.e., the PA Management Costs Interim Policy²⁰ or the DAC Pilot²¹).
 - Accordingly, FEMA will not include any additional funding for management costs or DAC in the fixed-cost estimates developed in accordance with this document.

Once FEMA, the Recipient, and the Subrecipient agree to the fixed-cost 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 adjustments for approved SOW changes associated with 406 HMPs 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 fixed amount, the Applicant may use the excess funds for the purposes described in **2.D.3. Use of Excess Funds**.

B.2. Timeframes for Reaching Agreement on Cost Estimates

The alternative procedures do not change the regulatory timeline for identifying disaster damage.²² In order to expedite assistance and reach agreement on the fixed-cost estimate for each facility, FEMA will work with Subrecipients to develop a facility work plan which will lay out percentage-based milestones that the facility will meet each quarter for each Phase in the National Delivery Model. In the event that a

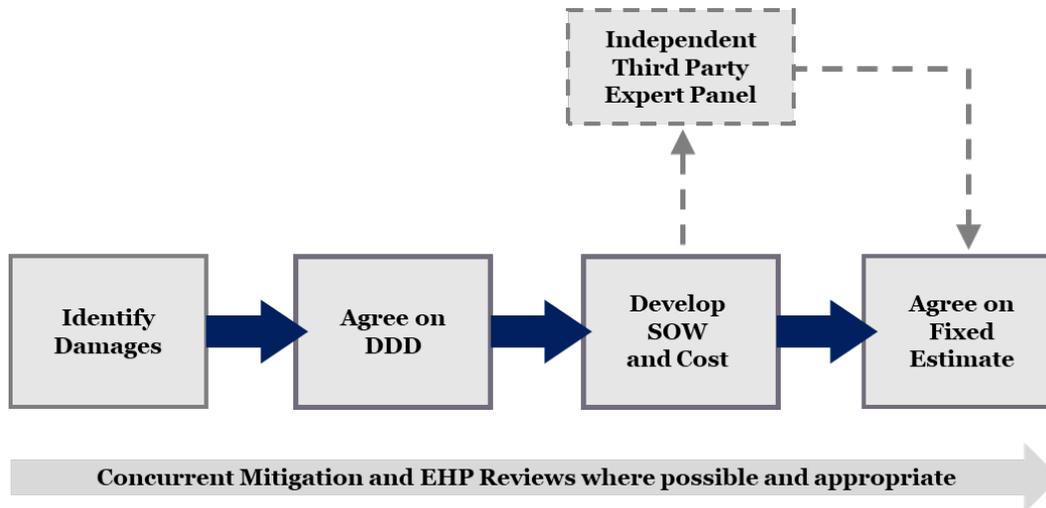
²⁰ www.fema.gov/media-library/assets/documents/174133.

²¹ www.fema.gov/media-library/assets/documents/153582.

²² 44 CFR §206.202(d)(1)(ii).

facility does not meet the milestones laid out in the facility work plan, FEMA will first escalate delays to COR3 leadership to address the issue. If there is continuing underperformance, FEMA will unilaterally move facilities through the process or issue an ineligibility determination and allow the Subrecipient to appeal the determination. Once an applicant accepts a fixed-cost estimate and funds have been obligated, the period of performance (POP) for that facility will be adjusted at the time of obligation.

Figure 1. Process for Reaching Agreement on Fixed Estimates



Once agreement is reached, no adjustments to the fixed-cost estimate will be made with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**.

B.3. Independent Expert Panel

A FEMA-funded, independent panel of cost estimating experts may review project estimates. The review will be limited to issues pertaining to the 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;
- 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.²³

The panel will complete its review before FEMA transmits the fixed-cost offer. It is expected that the

²³ 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.

expert panel validation will be completed within the required timeframe discussed in **2.B.2. Timeframes for Reaching Agreement on Cost Estimates.**

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 prevent future damage similar to that caused by the declared event. Under DR-4339-PR, 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. The timeline for the Applicant to agree upon an estimate for 406 hazard mitigation will be based on a facility-by-facility basis.

A Subrecipient may alter the 406 hazard mitigation SOW (HMP) after FEMA, the Recipient, and Subrecipient agree on the cost estimate for the initial proposal. After the project is obligated, the SOW for the HMP can be changed only once and the timeline for this change will be established based on a facility-by-facility basis. 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, the level of protection,²⁴ the revised cost estimate, and cost effectiveness of the new hazard mitigation proposal, and, if approved, will adjust the scope and cost estimate accordingly.

To achieve consistency between 404 mitigation and 406 mitigation grants, and maximize FEMA's ability to support and encourage cost-effective hazard mitigation, the following applies:

- Under FEMA-4339-DR-PR, 404 mitigation opportunities shall 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 re-evaluated in accordance with 44 CFR §206.434.

C.2. EHP Compliance Review

FEMA will consider natural and cultural resources during development of an applicant's 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.

²⁴ "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.

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.²⁵

If the Recipient or Subrecipient intends to use a fixed-cost subaward to pursue an improved or alternate project,²⁶ 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 an alternative procedures 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 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.

²⁵ www.fema.gov/media-library/assets/documents/118323.

²⁶ See 44 CFR §206.203(d).

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

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 subaward toward an improved or alternate project, but it must notify FEMA through Grants Portal 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**.

D.3. Use of Excess Funds

Excess funds exist when the final actual cost of the work under all of the Recipient's or a Subrecipient's PAAP subawards is less than the total of all cost estimates used as the basis for the fixed-cost subawards. When the Recipient or Subrecipient has completed all of the approved SOWs in all of its PAAP subawards for less than the agreed-upon aggregate cost estimate, it must submit a request to close its final PAAP 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 180 days of the end of the final PAAP project's completion date or period of performance, whichever is sooner. If a Subrecipient has multiple PAAP subawards, it must submit a request to close each PAAP subaward based on the above timeline, but does not submit a request to use excess funds until its last PAAP project is complete. As part of this request, the Recipient or Subrecipient must also provide information for the intended use of the excess funds to include the SOW and project timeline.

FEMA will initiate closure of the final PAAP 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 subaward, it must submit its request within 90 days of completion of the final project funded under that subaward or by 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.

The Recipient or Subrecipient may use all or part of the excess funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster and Other activities to improve future PA operations or planning. The following lists examples of eligible types of work and costs when using excess funds:

- Restoration of disaster-damaged facilities and equipment;
- Alternate projects (e.g., purchasing equipment, constructing new facilities, improvement to undamaged facilities such as shelters and emergency operation centers) in declared areas;
- Cost-effective hazard mitigation measures for undamaged facilities;
- Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities;
- Conducting or participating in training for response or recovery activities, including Federal grant management or procurement courses;
- Planning for future disaster response and recovery operations such as developing or updating plans (e.g., Debris Management Plans, Hazard Mitigation Plans, Pre-disaster Recovery Plan, Emergency Management/Operation Plans), integrating these plans into other plans, preparedness activities, exercises, and outreach; or
- Salaries for PA or emergency management staff. This may include but is not limited to staff performing PA grant administration, monitoring, and closeout activities for other PA disaster grants, and staff developing or updating disaster plans.

The Recipient or Subrecipient may use the funds for hazard mitigation on disaster-damaged facilities or facilities not damaged in the declared disaster. However, the mitigation must be applied to facilities that would otherwise be eligible for PA funding. Mitigation measures must be cost effective; the Recipient or Subrecipient is responsible for documenting cost effectiveness.

D.4. Unallowable Use of Funds

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;
- Meet operating expenses; or
- Conduct planning and design that go beyond the work related to the subaward(s), such as community-wide planning.

3. Awards Management Requirements

The process for monitoring and closing subawards is streamlined under PAAP. 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:

- FEMA and the Recipient will implement FEMA's *Public Assistance Alternative Procedures (Section 428) Internal Controls Considerations and Assessment Plan*.
- The Recipient or Subrecipient must complete work within established regulatory timeframes and request time extensions as appropriate.
- The Recipient or Subrecipient 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 Federal²⁷ and Government of Puerto Rico 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.²⁸ 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. Neither the Subrecipient nor the Recipient will be required to submit documentation to support any costs that FEMA previously reviewed as part of the manual drawdown process, nor will FEMA closeout staff review documentation that it already reviewed as part of the manual drawdown process. 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.

²⁷ Specifically, the Cash Management Improvement Act of 1990 (CMIA).

²⁸ 44 CFR §206.205(b).

C. Appeals

For critical service facilities funded using PAAP, the Recipient or Subrecipient may submit an appeal, in accordance with 44 CFR §206.206, if the Recipient or Subrecipient and FEMA could not resolve differences regarding DDDs or SOWs, or if the appeal is related to a cost adjustment made by FEMA after the fixed-cost estimate is accepted (e.g., related to insurance, non-compliance, or an audit). FEMA will adjust cost estimates based on the third-party independent expert panel's recommendations; thus, Recipients and Subrecipients may not submit appeals for additional costs related to a fixed-cost subaward.

FEMA will not consider appeals on a project if an Applicant opts in to PAAP for a non-critical service facility unless it is related to a cost adjustment made by FEMA after the fixed-cost estimate is accepted (e.g., related to insurance, non-compliance, or an audit). Any disagreement on the DDD, SOW, or cost must be resolved prior to accepting a fixed-cost estimate. Additionally, time extension denials on any PAAP project are not appealable.

D. Audits and Compliance Reviews

The Office of Inspector General will have the authority 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.

Appendix A Specific Changes to PA Alternative Procedures for Puerto Rico

Change	Version 4	Version for Puerto Rico	Reason for Change
Participation in 428 for permanent work	Voluntary	Voluntary for all non-critical facilities Mandatory for all critical facilities	The Recipient requested to make 428 PAAP optional for all permanent work on October 9, 2019. On January 23, 2020, FEMA decided to approve the request to make 428 PAAP optional for non-critical facilities that have not been obligated as of the date of this Policy.
Deadline to agree on fixed estimate	18 months from declaration date	18 months from the date of publication of the April 11, 2018 guide and extended on a facility-by-facility basis.	To allow sufficient time to identify eligible work and prepare cost estimates
Basis for eligible Section 406 hazard mitigation to be included in the fixed grant.	Retention of 406 mitigation funds where prevention of future similar damage is of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the originally approved repair subaward.	The portion of the recovery solution that reduces risk of future similar damages may be considered eligible 406 mitigation. The project must be shown to be cost-effective and will be limited to the pre-disaster capacity of the damaged facility/facilities.	Provides efficiencies in the process as it eliminates the requirement of preparing a scope of work, cost, and cost-effectiveness analysis for mitigation that would have been eligible at the disaster-damaged facility, and comparing risk reduction to the proposed mitigation actions. It also provides flexibility in that there is no pre-determined limit to the cost of mitigation, as long as it is shown to be cost-effective, and is limited to mitigation of the pre-disaster capacity of a facility.
Fixed-cost estimate for HMP	Part of the same fixed estimate for the associated project	Separate from the associated project	Reduces administrative burden for potential changes in SOW and ensures discretionary hazard mitigation funds are only applied to eligible hazard mitigation activities
Direct Administrative Costs (DAC)	DAC is based on an estimate as part of the fixed-cost estimate	No DAC allowance is provided for each project as part of the fixed-cost estimate	The Recipient has opted into the Interim Policy for new management cost authorities under Section 1215 of the Disaster Recovery Reform Act of 2018. Subrecipients have opted into either the Interim Policy or FEMA's <i>Public Assistance Alternative Procedures Policy for DAC</i> . In both cases, all management cost/DAC funding is captured on a separate Category Z Project Worksheet and, therefore, not included in the fixed-cost estimates for permanent work.