

De-obligation of FEMA Funding in the State of Florida

Mission Statement

To identify issues and recommend solutions for de-obligation challenges facing the nation by developing a partnership with stakeholder groups at the local, state and national level to engage the Federal Emergency Management Agency (FEMA) and Department of Homeland Security (DHS) to decrease deobligation incidences after a Public Assistance Program audit review.

Background

The U.S. Department of Homeland Security provides assistance to certain types of private nonprofits organizations, state, tribal, and local governments through the Federal Emergency Management Agency's Public Assistance (PA) Grant Program so communities can quickly respond and recover during major disasters and emergencies declared by the President. When a disaster occurs, it is the responsibility first of the local community and then the State to respond. Often, their combined efforts are not sufficient to cope effectively with the direct results of the disaster. This situation calls for federal assistance to supplement state, tribal, and local efforts. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 - 5207, authorizes the President to provide such assistance. Assistance is coordinated through FEMA, a component of the Department of Homeland Security (DHS). The PA Program provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit organizations. The overarching goal of PA Program is to provide financial assistance to states through a cooperative federal, state and local effort.

In order to ensure that public dollars were put to good use in these situations, the DHS Office of Inspector General (OIG) and others conduct audits to verify compliance with federal guidelines. As states and communities experience ever-increasing costly disasters, the total number and dollar amount of these audits also increases. And, even though the majority of these audits find no errors, those audits that do find some reason to de-obligate funding and return it to the federal government represent a growing hardship to organizations that experienced the actual disaster as long as a decade ago (in Florida, \$132M has been de-obligated since 2009, primarily because of the seven hurricanes that struck the state in 2004 and 2005). As other states deal with post-2005 disasters like Hurricanes Katrina, Ike, Gustav, Irene, and Sandy, Tornadoes like Joplin, Tuscaloosa, and Moore, or any of the several hundred presidentially-declared disasters, it is likely that they too will face similar issues.

There are a number of reasons that these dollars are being recouped. In some circumstances, such as duplication of benefits from another agency or insurance provider, the de-obligation is completely appropriate and justified. In too many cases, however, the reason can be traced to inadequate documentation (given the time that has often elapsed since the initial expenditure, a not unexpected result), conflicting judgments rendered by federal officials, conflicting interpretations of regulations, and conflicts between federal agencies involved in the event.

Compounding the situation is the length of time from the initial incident to final resolution. FEMA's cost-reimbursement model leads to extended recovery time, and the window for an audit extends three years beyond the closure of that project. In addition, FEMA has had difficulty meeting the congressionally-mandated time frame for ruling on appeals and some jurisdictions are choosing to pursue resolution in the court system. Because FEMA withdraws the money from the state's funding immediately upon de-obligation but impacted organizations are reticent to repay the money until they have exhausted their options, the state is left holding the debt. This makes it difficult or impossible to continue to pay outstanding claims on that disaster, further increasing the exposure to future audits. In Florida, there have also been organizations that have dissolved since the disaster, leaving the state to pay the debt.

Left unchecked, the current process will continue to reduce the nations’ ability to prepare for, respond to, and recover from disasters as FEMA grantees have to divert money from their current budgets to deal with decade-old disasters, increasing administrative costs, and personnel-time better spent preparing for the next event. An aggressive awareness and process improvement program implemented now will ensure that taxpayer dollars are spent appropriately during future disasters and better position the nation to respond to increasingly frequent and costly events.

Summary of DHS OIG Florida’s Audit Reports

Fiscal Year	# of Audit Reports	Review Period	Total Award	Amount Audited	Total Deobligations	Percentage
2009	51	Sept 1998-Feb 2007	\$203,375,289	\$163,145,663	\$26,310,666	16.1
2010	45	July 2003-Oct 2008	\$118,400,000	\$105,481,684	\$22,810,083	21.625
2011	58	June 2001-Oct 2008	\$302,644,008	\$238,687,235	\$34,414,938	14.4
2012	59	Nov 2002-Dec 2009	\$164,831,978	\$135,795,533	\$28,653,173	21.1
2013	59	Aug 2004-Dec 2009	\$165,630,476	\$121,534,612	\$20,615,976	16.9
TOTAL			\$954,881,751	\$764,644,727	\$132,804,836	17.36

For DHS OIG audit reports issued in FY 2009-2012, Florida’s percentage of awards were higher than nation-wide, 81.5% for Florida compared to 67.8% nation-wide. Florida’s percentages of recommended disallowances were lower, 17.4% for Florida compared to 22.8% nation-wide. Florida’s recommended disallowances totaled \$132,804,836 in FY 2009-2012 DHS OIG audit reports.

Current De-obligation Situation

FEMA has deobligated a total of \$132,804,836.00 from Florida for projects identified with funds inappropriately spent outside accordance with federal regulations and FEMA guidelines. Many counties are currently appealing their deobligation judgments with FEMA but have been experiencing delayed appeal judgments. The Florida Division of Emergency Management has been working with local officials to recover funds deobligated by FEMA. Of those funds, \$67,640,033.47 still needs to be repaid to the state of Florida. Today, we are working towards identifying and communicating with impacted stakeholders about best practices and procedures during disasters to prevent deobligation issues in the future.

Goals

Develop strategic partnerships with key organizations and individuals who are impacted or potentially impacted by de-obligation.

- Identify potential organizations and individuals affected by this issue and encourage their involvement in this improvement process
 - States, counties, municipalities, school boards charitable organizations, academic institutions
 - Local and state elected officials, state legislators, Congress, and their staff
- Provide background, status updates, action plan and resources concerning de-obligation issue
- Provide continual updates regarding current and upcoming audits
- Monitor Florida’s and the nation’s de-obligation cases, as well as the status of appeals, court cases, and repayment status
- Develop framework for standardized information sharing between states to better monitor progress

Work with FEMA and DHS to solidify best practices and procedures for PA program.

- Evaluate and examine their regulations, policies, and procedures and identify gaps inhibiting effective grant and subgrantee management and project execution
- Identify opportunities for improvements of FEMA's technical assistance such as training and project monitoring of PA funding to assist subgrantees in following the applicable laws, regulations and policies throughout the development of the project
- Emphasize the importance of timely appeals processing
- Establish an on-going process to enable conversation between FEMA and appropriate stakeholders to continually review program changes and improvements and develop timely and effective solutions to emergent issues

Engage DHS OIG to develop mutually-beneficial solutions

- Provide information about the impacts of audits and workgroup effort.
- Encourage a pilot program focused on increasing transparency of audit selection and purpose, earlier audit times and a formalized timeline for the audit process

Outreach to stakeholders and program facilitators about process improvements.

- Communicate with subgrantees about specific Federal statutes and FEMA regulations that are identified as common audit findings such as improper accounting procedures, contracting/procurement methods, duplication of benefits, insurance guidelines and labor/equipment costs
- Develop training materials to educate our partners on how to achieve their goal of de-obligation prevention in future storms
- Develop feedback mechanisms and process improvements to ensure that best practices are captured and formalized.

Serve as a leader to other states facing similar issues

- Collaborate with National Emergency Management Association (NEMA) Workgroup to provide Florida and other states an understanding on how states are reacting and responding to deobligation incidents. Through this conversation, we hope to develop a nation-wide action plan for best practice and procedures during PA program management to decrease the future de-obligations on the national level.

Next Steps

- Validate Mission and Goals
- Develop time-frame for implementation
- Identify objectives for each goal
- Assign appropriate work groups to accomplish objectives
- Develop work plan and reporting frequency and format

Resources:

Public Assistance Important Websites:

- **FEMA Public Assistance Grant Program:** <http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit>
- **PA Program Policy and Procedures:** <http://www.fema.gov/public-assistance-policy-and-guidance>
- **2014 FEMA PA Pocket guide:** <http://www.fema.gov/media-library-data/1401828490941-5affbe7761193f29dbd24df694e2ad98/FEMA%20PA%20Pocket%20Guide.pdf>
- **Stafford Act:** <https://www.fema.gov/media-library/assets/documents/15271?fromSearch=fromsearch&id=3564>
- **Public Assistance FAQs:** <http://www.fema.gov/public-assistance-frequently-asked-questions>
- **Florida League of Cities: Lessons Learned** <http://www.nlc.org/Documents/NLC-RISC/2012-10%20-%20RISC%20Report-FloridaLeagueofCities-FEMAGuidanceDocument.pdf>

DHS OIG Capping Reports

- 2009: http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-11-01_Dec10.pdf
- 2010: http://www.oig.dhs.gov/assets/GrantReports/OIG_DD-11-17_Aug11.pdf
- 2011: http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-74_Apr12.pdf
- 2012: http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-90_May13.pdf
- 2013: http://www.oig.dhs.gov/assets/GrantReports/2014/OIG_14-102-D_Jun14.pdf