
STATEMENT OF MATT JADACKI

ASSISTANT INSPECTOR GENERAL

OFFICE OF EMERGENCY MANAGEMENT OVERSIGHT

OFFICE OF INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
AND EMERGENCY MANAGEMENT**

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 13, 2011



Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to discuss streamlining and cutting costs, while improving preparedness and response capabilities, at the Federal Emergency Management Agency (FEMA).

First let me acknowledge the great amount of work that has been done by FEMA in the past six years. We have learned a lot since Hurricanes Katrina and Rita in 2005 and Ike and Gustav in 2008, and FEMA has used these lessons learned to improve its preparedness and response capabilities. There is more to be done, however, as we are all faced with decreasing budgets and scarce resources. This is why streamlining and cutting costs is so important, especially in the current economic situation. Not only is FEMA facing resource constraints, but the very entities and individuals they must help are facing their own budget shortfalls. State and local governments have fewer dollars to allocate toward preparedness and response, and individuals and households already facing tight budgets must rely more heavily on federal assistance.

My office has conducted a significant amount of work assessing FEMA's programs and policies, as well as conducting audits of disaster grantees and subgrantees. Our program audits cover a wide range of areas, including: acquisition management, logistics, individual assistance, public assistance, and mitigation. We have made important findings and recommendations in all of these areas, and I am pleased to say that FEMA is implementing many of our recommendations.

With regard to streamlining, my remarks today are focused on the public assistance and disaster close-out processes. I will also discuss several areas with the potential for cost savings, including debris removal and acquisition management, as well as holding grantees and subgrantees accountable for ineligible and unsupported costs. Finally, I will touch on improving preparedness and response through tracking lessons learned and implementing corrective actions.

Increasing Number of Disaster Declarations

I would like to begin my remarks discussing two areas that could dramatically cut costs, but should only come through discussion and decision making by Congress.

Suggestions that have been made by my office and others for reducing the federal costs of disaster relief include strengthening declaration criteria to prevent "marginal" emergencies and disasters from being declared and adjusting the cost-share so that states are responsible for a larger portion of recovery funding.

Between 1953 and 2011, FEMA declared 2,036 disasters. This averages to 35 disasters per year. However, this figure does not show how the number of disasters has increased over the years. To illustrate, the average number of disasters per year for the first ten year period (1953-1962) was 14 per year. The number for the most recent 10-year period (2001-2010) is 60 per year. There have been more disasters declared than the average of 35 in every year since 1995.

One of the reasons the number continues to increase is the way FEMA assesses whether to recommend to the President that a disaster be declared. The Stafford Act prohibits FEMA from relying solely on an arithmetic formula or sliding scale in denying federal assistance. Thus, FEMA relies on a combination of quantitative and qualitative factors when assessing a declaration request. The qualitative factors include localized impacts, insurance coverage, previous mitigation efforts, recent multiple disasters, and the availability of other federal assistance. Quantitative factors include the amount of damage per capita and the total amount of damage statewide. The basis of the per capita amount used today is the average per capita personal income nationwide in 1983, which was \$12,583. Based on this, the per capita amount was set in 1986 at \$1.00. In its formal criteria published in 1999, the per capita threshold remained at \$1.00. This figure is now adjusted annually based on the Department of Labor's Consumer Price Index – Urban, but today it is still only \$1.30 per capita, even though average per capita income nationwide today is closer to \$40,000. The other quantitative factor is the total amount of damage to the state. That threshold, set in 1999, remains \$1 million. Some have suggested that using Total Taxable Resources provides a better estimation of state funding capacity. While we are not in a position to make this recommendation, we believe it would be reasonable for Congress to reexamine how FEMA assesses declaration requests and the state's ability to handle them without federal assistance.

The Federal Cost-Share

Under the Stafford Act, the federal share of most assistance provided under sections 403 (Essential Assistance), 406 (Repair, Restoration, and Replacement of Damaged Facilities), and 407 (Debris Removal), is to be not less than 75 percent of eligible costs. While this sets a minimum federal cost share, it leaves discretion for increasing the federal share, and in fact, the Congressional Research Service (CRS) reports that there were 222 cost-share adjustments between 1986 and 2009. Some of these adjustments were done through administrative actions and some were directed by Congress. Some of the cost share adjustments were time-limited, providing an increased federal share for the first 72 hours after the disaster or the first 30 days. In almost all cases cited by CRS, the federal cost share was increased to 90% or 100% of eligible costs.

While cost-share adjustments can be a great help to state and local governments when economies have been devastated, they reduce the supplemental nature of Stafford Act funding. And when the state's cost share is reduced to zero, there is little incentive for state and local governments to save money or to close out projects in a timely manner.

There is already some movement to reduce the federal share when it comes to repetitive loss properties. The Stafford Act contains a provision for reducing the federal cost share for a facility that has been damaged on more than one occasion within the preceding 10-year period, by the same type of event, and the owner has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility. However, that provision will not take effect until FEMA promulgates a regulation. While FEMA published a proposed rulemaking notice in 2009 and received comments on the proposed rule, it has not yet been finalized.

Streamlining Public Assistance and Disaster Close-Out

In response to concerns raised by this committee, my office conducted an in-depth assessment of the design and implementation of FEMA's Public Assistance (PA) Program policies and procedures. We followed up with reviews focused specifically on the PA appeals process and disaster close-out. These are two areas where streamlining could result in significant cost savings.

The PA Program provides critical assistance—in the form of direct assistance and grants—to state, tribal, and local governments, as well as certain private nonprofit organizations, to enable communities to quickly respond to and recover from presidentially declared emergencies and disasters. The PA Program is administered through a coordinated effort among FEMA, grantees, and subgrantees. FEMA manages the overall program, approves grants, and provides technical assistance to applicants.

In our review of the PA Program, we analyzed data on FEMA's timeliness, accuracy, and achievement of performance measurements. Our assessment revealed multiple challenges that significantly hinder FEMA from consistently administering the PA Program in an efficient and effective manner. These challenges include: (1) untimely funding determinations; (2) deficiencies in program management; and (3) poorly designed performance measures. Today, I will focus on the issue of untimely funding decisions, especially at the appeals stage.

Improving the Timeliness of Funding Decisions

FEMA needs to improve the timeliness of PA funding to avoid project delays and to improve program efficiency. Such improvements should center on: (1) the Environmental and Historic Preservation process; (2) the reconciliation of insurance settlements; and (3) the appeal determination process.

The issue of timeliness in funding decisions primarily comes into play when an initial funding decision is appealed. This is where the real delays occur. FEMA takes excessive time to process appeals because it does not adhere to—or has not established—timeliness standards for the entirety of the appeals process, nor does it have a standardized system to track appeals. FEMA frequently rendered its appeal decisions long after the appeal was submitted; in some of the cases we reviewed, the process spanned several years. This problem is compounded because FEMA has no agency-wide system to track appeals from submission date to final determination. As a result, FEMA has no standardized means to identify delays for each appeal. Nearly all the subgrantees with whom we spoke expressed dissatisfaction with the process and its seemingly inherent lack of timeliness.

To address this issue, we recommended that FEMA:

- Establish a complete set of standards for achieving timeliness in the appeals process and adhere consistently to those standards previously established; and
- Develop and implement a tracking system that records the status and timeliness of each appeal.

We issued a follow-up report on the PA appeals process in March of this year and determined that further improvements are needed. Although delays in processing PA appeals occurred at all levels, the delays within headquarters were the most significant. We determined that in the first five months of fiscal year 2010, the average processing time for second level appeals at headquarters was 227 days, or more than 7 months. Unfortunately, the average processing time appears to be increasing rather than decreasing. The average time in 2003 was 163 days. As a result of the delays, appeals remained open for long periods and issues concerning project eligibility and costs remained unresolved.

Delays in processing appeals impact the applicant, the state, and FEMA operations. Until an appeal is decided, applicants have to obtain other sources of funds to complete projects or pay contractors. Delays increase state and FEMA administrative costs of monitoring appeals and responding to inquiries concerning the status of appeals.

Alternatives to Streamline the PA Process

Based on the work we have conducted, we have identified various alternatives that could be employed to streamline the PA process. Those alternatives that we explored include:

- Negotiating settlements for: (1) all projects; (2) permanent categories of work; and/or (3) small projects only;
- Increasing the *large project* threshold while maintaining the current reimbursement process;
- Replacing some grants with mission assignments;
- Transferring other federal disaster programs to FEMA; and
- Providing interval payments.

Negotiated settlements for: (1) all projects; (2) permanent categories of work; and/or (3) small projects only. This alternative would change the present reimbursement (and document-intensive) process to a fixed, lump-sum negotiated settlement between FEMA and the grantee and subgrantee, based on FEMA's estimates of damage and cost, in conjunction with pertinent information provided by the subgrantee. These estimates would be binding and would not be subject to change for any reason. Moreover, the settlement(s) would be completed no later than 6 months after the disaster declaration. The advantages of negotiated settlements are that: (1) the subgrantees' cash flow would significantly improve early in the recovery process, resulting in reduced project delays; (2) administrative efforts at all levels would be greatly decreased, resulting in significant time and money savings for all; and (3) there would be a reduction in state and local

administrative requirements, and thus a reduction in administrative fees paid to the grantee and subgrantee. Drawbacks would exist, nonetheless: (1) FEMA's estimates for the negotiated settlements will likely differ from actual costs, resulting in possible shortfalls or windfalls to the subgrantee with no recourse for either party; and (2) subgrantees may decide to not complete some of the disaster projects, and could instead use that funding for other purposes.

Increase the *large project* threshold while maintaining the current reimbursement process. This would result in a significant increase in the number of projects classified as *small* projects. The PA Program differentiates between *small* and *large* projects based on costs. That threshold is increased annually, based on the Consumer Price Index. Funding for projects classified as *small* is generally final, and full payment is available upon approval of the original estimates (although projects are subject to final audit and inspection). The advantages for increasing the *large project* threshold are that: (1) administrative efforts and costs for all parties would be reduced based on the streamlined process for small projects; and (2) subgrantees' cash flow would improve because they would not need to incur costs prior to receiving payment, unlike for projects classified as *large*. The drawbacks are that under the *small project* criteria, subgrantees retain any excess funding for all combined *small projects* due to overestimates of costs, whereas excess *large project* funding must be returned to the federal government.

Replace some grants with mission assignments. This alternative would change the system for designated categories of work—such as debris removal—to a prescribed system of tasking and funding other federal agencies (such as the U.S. Army Corps of Engineers) to perform the work. The advantage of this alternative is that: (1) grantees and subgrantees would avoid the oftentimes cumbersome documentation, reimbursement, and closeout requirements of the current system; (2) experienced federal agencies would be responsible for the work, thus increasing the likelihood of improved efficiency and quality control; (3) contracting resources may be greater, resulting in faster completion of projects; and (4) administrative costs paid by FEMA to grantees and subgrantees would be decreased. An anticipated drawback would be subgrantees' reluctance to reduce control over work performed within their jurisdictions.

Transferring other federal disaster programs to FEMA. This alternative would entail Congress permanently authorizing FEMA to assume responsibility for all federal disaster projects that involve significant hazards to life and property. Currently, other federal agencies perform work that—if delayed—could affect public safety and property. Thus, this alternative would: (1) mitigate against risks to life and property by creating the potential for a more immediate response; (2) relieve subgrantees from the burden of learning, and adhering to, various rules and procedures of other federal agencies in the aftermath of a disaster; and (3) reduce subgrantees' costs through economies of scale and increased efficiency by having fewer contracts for similar work. Nevertheless, this alternative may potentially yield less funding for subgrantees because of FEMA's cost-share provisions.

Interval payments. This alternative would entail the automatic disbursement of funding to subgrantees at specified intervals of the recovery period based on project estimates—as opposed to the present system of requesting cash reimbursements after costs are incurred. At closeout, FEMA would reconcile eligible project costs with the amount disbursed and determine a final settlement with the subgrantee. This alternative would: (1) lessen the administrative requirements for the grantee and subgrantee because those requirements would be reduced as a result of the need to process only a few large payments instead of numerous payments; (2) reduce grantees’ responsibility for ensuring that subgrantees’ reimbursements are accurate; (3) improve subgrantees’ cash flow early in the recovery process; and (4) reduce administrative or management fees based on a reduction of state and local administrative efforts. However, automatic payments based on estimates would require a subgrantee to repay FEMA at project closeout for the amount of interval payments that exceeds actual costs on recovery activities, which could place a burden on the subgrantee if it has inappropriately expended payments.

Improving the Timeliness of Disaster Closeout

One of the impacts of delays in processing PA appeals is that until appeals are resolved and projects are completed, disaster grants cannot be closed out. I cannot emphasize enough the importance of closing out disasters in a timely manner, because it is during the close out process that unused funds are deobligated and can then be applied to other projects. Additionally, FEMA continues to incur costs associated with monitoring open disasters that should have been closed long ago. Improvements are needed to close disasters in a timely manner and to reduce administrative costs associated with open disasters.

Delays in closing disasters start at the grantee level and continue through final processing at agency headquarters. Several opportunities exist to improve the closeout process and expedite the release of unneeded obligations. The opportunities include establishing time standards for the process, developing a system to track the progress of closeouts, ensuring that technical assistance contracts are reconciled in a timely manner, closing FEMA/State Agreements when the state has completed its disaster recovery activities, establishing cost-beneficial “floors” for expenditure reconciliations, and establishing a system for communicating disaster closeout best practices throughout the agency.

Just to give you an idea of the magnitude of the problem, let me give you some statistics for Katrina-related projects. Under the Code of Federal Regulations, all PA projects should be completed no later than 48 months after the date of the disaster declaration. It has been about 6 years, or 72 months since Hurricane Katrina, yet in Louisiana, only 6.3 percent of projects are closed. In Mississippi the number is 76.6 percent, and in Alabama the number is 99.5 percent. Granted, Louisiana was the most hard-hit state, but even in the category of debris removal, which should have been completed years ago, only 34 of 615 projects are closed.

Considerations for Cutting Costs

Debris Removal

I would like to turn now to two programmatic areas where FEMA could cut costs: debris removal and acquisition management. FEMA's PA program has expended more than \$8 billion over the past 11 years reimbursing applicants, primarily cities and counties, for removing debris resulting from natural disasters. In general, this has been a successful effort. Quick and efficient debris removal allows communities to proceed toward recovery unencumbered by piles of debris. Better planning, contracting, and oversight of debris operations, however, could enable these operations to be conducted in a more cost-effective manner, saving money at the federal, state, and local levels.

Debris planning allows communities to be better prepared for a disaster by identifying debris collection and disposal sites, identifying potential debris contractors, and preparing debris removal contracts in advance of a disaster. A pilot program that operated in 2007–2008 was successful in encouraging the development of debris plans, but momentum has been lost since the Congressional authority for that pilot program expired.

Decisions made in the first few days after a disaster are critical in determining the success of a debris removal operation. The quality of management and oversight remains a key element in success or failure of the program. While FEMA has made significant strides in this area, opportunities remain for further improvement. Federal disaster response teams need to address debris expertise. Debris removal guidance is often unclear and ambiguous. Finally, an integrated performance measurement system would provide federal and state officials and stakeholders with the data and tools to measure, analyze, and improve debris operations.

Debris removal is generally performed effectively and in a timely manner, but not necessarily at the lowest possible cost. Better monitoring presents significant opportunities for saving money, as current methods leave FEMA and its applicants vulnerable to potential waste, fraud, and abuse.

Acquisition Management

We have issued a number of reports on acquisition management over the past five years, and FEMA has been responsive to many of our recommendations. I will not spend much time discussing our reports in this area, but I do want to highlight two FEMA programs where better acquisition management could result in significant cost savings: Public Assistance-Technical Assistance Contracts (PA-TAC) and Individual Assistance-Technical Assistance Contracts (IA-TAC).

PA-TAC contractors provide the necessary technical resources to support FEMA's PA operations. Services include providing technical assistance to grantees and sub-grantees, such as architect-engineer services, environmental experts, and other professional

services, in support of the PA program. FEMA's IA-TAC contracts, with a total funding ceiling of \$1.5 billion, are for comprehensive program management services as well as construction, architectural, and engineering capabilities to support housing; mass care; and disaster planning, staffing, and logistics services.

In a recent report, we reviewed FEMA's use of PA-TACS to support the response and recovery efforts after the 2008 Iowa flooding and hurricanes Ike and Gustav. As of May 2010, the total amount paid to PA-TAC contractors for these disasters was more than \$165 million. Under its PA-TAC Indefinite Delivery Indefinite Quantity contracts, FEMA awards task orders for specific services. Task orders should be awarded to provide the best value to the government and in turn the American taxpayers. However, for all nine task orders we reviewed, the primary reason contractors were selected was "Equal distribution of dollars between the TACs," rather than competence, qualifications, or experience.

At the time of our review, FEMA had not established performance expectations and did not monitor or evaluate the performance of the PA-TAC contractors. Without performance metrics or evaluations of performance, FEMA was unable to determine whether the PA-TAC contractors performed their responsibilities or if the federal government received a fair return on PA-TAC services.

The management of PA-TAC contractors was inconsistent throughout FEMA. Task Monitors had not received job-specific written guidance or training on their roles and responsibilities, nor had they received guidance on how to evaluate contractor performance or certify and reconcile contractor invoices and billing documentation. Additionally, PA-TAC task order files were not in compliance with FAR requirements. FEMA has a history of not properly managing, tracking, and monitoring contracts. Insufficient oversight of the PA-TAC contracts increased the potential for a loss of management control and created an environment that provided opportunities for fraud, waste, and abuse.

We also reviewed FEMA's IA-TACs, and this report will be released shortly. While I cannot comment on the specifics of our results at this time, I can say that we have many of the same concerns with these contracts that we have with the PA-TACS.

Common Grant and Subgrant Deficiencies

FEMA is not the only one responsible for the stewardship of disaster funding. The grantees (states) and subgrantees (local governments and non-profits) also bear responsibility for properly utilizing federal funds. FEMA needs to hold grantees and subgrantees more accountable for their actions. We recently released our FY 2010 capping report, which summarizes the results of PA program grant and subgrant audits performed during fiscal year 2010, identifies frequently reported audit findings, and quantifies the financial impact of these findings.

Of the 45 audits performed in FY 2010, 44 reports contained 155 recommendations with a potential monetary benefit of \$165.25 million. One of the primary areas where we identified recurring problems is in complying with federal contracting requirements. We reported 11 instances where subgrantees awarded a total of \$72.7 million in contracts that did not comply with federal procurement regulations. Subgrantee contracting practices that do not comply with federal procurement regulations result in high-risk contracts that may cost taxpayers millions of dollars in excessive costs and often do not provide full and open competition. We did consider the exigencies that often arise early after a disaster occurs, and as a general rule did not question contracting practices or costs associated with those exigencies. However, subgrantee noncompliance after bona fide exigencies no longer exist remains a major concern. Although FEMA has remedies available when a grantee or subgrantee does not comply with applicable statutes or regulations, FEMA does not hold grantees and subgrantees adequately accountable for noncompliance with procurement regulations. FEMA seldom disallows improper contract costs, citing that it has the authority to reimburse PA applicants for the reasonable cost of eligible work. Consequently, there is little incentive for grantees or subgrantees to follow procurement regulations. Proper contracting and full and open competition provide an environment for obtaining reasonable pricing from the most qualified contractors and help discourage favoritism, collusion, fraud, waste, and abuse.

We reported 17 instances where \$60.77 million in FEMA funding could be put to better use if unneeded project funding was deobligated (\$59.72 million) and interest earned on FEMA funds (\$1.05 million) was collected. Interest accruing on federal funds belongs to the federal government and, as such, must be remitted to FEMA. Fourteen audits reported instances where project funding was no longer needed by subgrantees and recommended that a total of \$59.72 million in unneeded funding be deobligated. Deobligating unneeded funds sooner would (1) free up funding to cover cost overruns on other projects associated with the disaster, (2) aid in closing out the subgrantee's PA application, since projects would be settled throughout the life of the application rather than after all work is completed, (3) provide a more accurate status of PA program costs for a disaster, and (4) be consistent with appropriations law.

It is FEMA's responsibility to hold states accountable for proper grant administration, especially with regard to contracting practices. Although FEMA has the authority to waive certain administrative requirements, it should not be standard practice to allow noncompetitive and cost-plus-percentage-of-cost contracts even when the costs are reasonable. For eligible work, FEMA should use the remedies specified in federal regulations as (1) a means to hold grantees and subgrantees accountable for material noncompliance with federal statutes and regulations and (2) an incentive to properly account for and expend FEMA funds.

Improving Preparedness and Response

The final area I want to address is one way in which FEMA can improve its preparedness and response capabilities. Former Inspector General Skinner used to say that a lesson learned is really only a lesson recognized until action is taken on it. FEMA has a system

in place to recognize issues and lessons learned, but it does not have a viable system in place to ensure that appropriate actions are taken to improve future performance.

FEMA implemented the Remedial Action Management Program to: (1) identify operational and programmatic issues, lessons learned, and best practices; (2) manage the subsequent remediation of issues; and (3) distribute lessons learned and best practices. However, in May 2010, FEMA lost access to program data, including lessons learned and best practices, when the server which housed the program's database failed. In November 2010, program officials informed us that they were able to recover all of the data; however, the software necessary to read the data has not been restored. Therefore, historical data on lessons learned and best practices that was contained in the program's database is not available to all FEMA personnel. FEMA has been revising their lessons learned/best practices program, but does not have an adequate replacement program in place yet. Until FEMA has a system in place to identify issues and best practices after every disaster or exercise, a means of tracking corrective actions, and a mechanism for distributing lessons learned and best practices to all staff, it will be limited in its ability to continually improve its capabilities.

Mr. Chairman, this concludes my prepared remarks. I welcome any questions that you or the Members may have. Thank you.