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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

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Good afternoon, Madam Chairwoman and Members of the Subcommittee. My name is Matt Jadacki and I am the Assistant Inspector General for the Department of Homeland Security (DHS), Office of Inspector General (OIG), Office of Emergency Management Oversight (EMO). Thank you for the opportunity to discuss where we are and what we have learned in the five years since Hurricane Katrina.

In brief, we have learned a lot from Hurricane Katrina, and FEMA is better prepared to handle large disasters. There is, however, still room for improvement, to ensure that preparedness, response, recovery, and mitigation efforts are carried out efficiently and effectively, and in a manner that minimizes the risk of waste, fraud, and abuse.

My office has conducted a significant amount of work in the past five years, 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, but today I would like to focus my testimony on the area of public assistance. I will discuss our recent report on public assistance policies and procedures, as well as the arbitration process that has been established for some public assistance projects. I will also briefly mention a report that we plan to issue this fall on the public assistance appeals process.

Assessment of FEMA's Public Assistance Program

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. This 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. Our review primarily focused on the efficacy of FEMA's policies and procedures with respect to the individuals and organizations that have to navigate them: the grantees and subgrantees. We interviewed more than 200 officials from FEMA Headquarters, FEMA regional offices, and FEMA recovery offices, and five state government offices responsible for developing and administering the PA Program. Our interviews also included officials of 14 local government entities that are PA Program grant recipients. This fieldwork was conducted in the states of Louisiana, California, Florida, Mississippi, and Washington, as well as the District of Columbia. We also analyzed data on FEMA's timeliness, accuracy, achievement of performance measurements, and other key areas of the PA Program.

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. Although we determined

that many of these obstacles derive from personnel-based issues, there are other noteworthy causes that likewise contribute to the obstacles FEMA must overcome. Consequently, we presented FEMA with 16 recommendations to improve not only FEMA's process for reviewing and approving Public Assistance projects, but the overall administration and delivery of the program. Further, we identified various alternatives to streamline the PA process and noted the benefits and concerns associated with each. We also developed 4 specific matters for consideration by Congress.

When we issue a report, we ask the subject agency to respond to our recommendations and provide a Corrective Action Plan (CAP) within 90 days. FEMA's 90-Day Letter/CAP for our report on PA policies and procedures was due in March, but we only received it last week. We are still in the process of evaluating FEMA's response; however, I can report that FEMA has taken some actions in response to our recommendations, and I will note some of these in my testimony.

Timeliness of Funding

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 appeal determination process; (2) the Environmental and Historic Preservation (EHP) process; and (3) the reconciliation of insurance settlements.

Appeal Determinations

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. This may serve to explain why some FEMA officials we spoke with were not aware of the untimeliness of the appeals process. 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.

In its CAP, FEMA acknowledges the untimeliness issue but insists that the problem is being addressed through the application of additional staff resources and improvements in the processing of appeals. We are pleased that FEMA has established a system for tracking appeals, as we recommended. We are concerned, however, that FEMA does not

plan to take action to establish timeframes in the appeals process beyond what is currently in regulation.

FEMA should also establish a mediation or arbitration process for appeals that have reached an impasse, and refer claims that have reached an impasse with FEMA's appeals system to a mediation or arbitration board. I will talk more about the current arbitration process later in my remarks.

My office is currently conducting a more in-depth audit of the PA appeals process. While it would be premature to discuss specific findings of the audit, I can say that the current team of auditors is identifying many of the same challenges identified in the previous report. We expect to issue this report by the end of the year.

Environmental and Historic Preservation Process

The Environmental and Historic Preservation (EHP) process has fostered significant delays in the PA Program and continues to have a negative impact on timeliness. FEMA is required to determine subgrantee compliance with applicable environmental and historic preservation laws, regulations, and executive orders before PA funds are provided and work can begin. And although this process can be inherently time-consuming, unnecessary delays occur because FEMA does not:

- Perform EHP reviews consistently, early in the disaster recovery process;
- Triage EHP workload based on importance;
- Require formal time limits for the EHP process;
- Coordinate sufficiently, and establish or simplify pre-disaster agreements, with the federal agencies involved in the EHP process; and
- Coordinate state EHP workload to mitigate duplicative efforts.

To address these challenges, FEMA should:

- Initiate and triage the EHP workload, immediately after a disaster, based on importance and not necessarily the order in which received;
- Establish and enforce formal time limits for the EHP process; and
- Coordinate the EHP process through programmatic or similar agreements with other federal agencies and state entities.

FEMA has told us that they are currently revising the basic EHP course for disaster employees and will ensure the training includes discussion on triaging and using the EHP Management Plan to manage workloads and construction time windows.

FEMA will also make its EHP programmatic agreements more transparent by placing them on the Internet and by referring to them in its Disaster Greenbooks. We appreciate these steps, but believe more needs to be done if timeliness of the EHP process is going to be improved.

Insurance Settlements

Subgrantees encounter delays in completing work on insured structures as a result of monetary shortfalls while awaiting final settlement from their insurer, which can take years. Although subgrantees can receive advances from FEMA, many are generally not in favor of addressing cash flow problems through this option because of financial management and accountability concerns. One solution is for FEMA to provide funding for projects that will later be covered by insurance proceeds, when the subgrantee and the insurer agree to subrogate all applicable funds to FEMA upon settlement.

FEMA indicated in its CAP that they will study the viability of this option and make a decision on implementing it by September 30, 2010.

Program Management

Another area that could benefit from improvement is FEMA's management of the PA Program. Impediments to successful program management include:

- Delays and excessive administrative efforts resulting from FEMA's inconsistent determinations on project eligibility;
- Inaccurate cost estimation or scopes of work in the initial documentation that can create the need for a significant number of time-consuming and labor-intensive revisions;
- Deferral of decisions that can preclude timely site inspections and reviews that would determine cost eligibility more reliably, thereby subjecting subgrantees to risk that cost and scope changes will ultimately be determined ineligible;
- Insufficient detail on scopes of work that can cause delays when grantees require that the project scope of work exactly match the cost documentation;
- Negotiations with subgrantees on eligibility, whereby subgrantees are subjected to deal-making instead of decisions based on formal criteria;
- Repetitive documentation requests that can impose a significant administrative burden on all parties, as well as generate project delays;
- Inconsistently applied local building codes and standards that can result in appeals and delays;
- Unidentified or misinterpreted PA Hazard Mitigation work eligibility that can result in untimely or inaccurate funding determinations after work has been completed, thereby effectively preventing the subgrantee from performing eligible mitigation work; and
- Undefined methodology for cost estimates involving "reasonableness."

I will not take the time to discuss these challenges in detail but would be happy to come back to them during the time for questions. I do, however, want to talk about some underlying causes.

Employee Turnover, Inexperience, and Limited Training

The issues I just listed are caused principally by turnover, inexperience, and limited training within FEMA's disaster workforce. Because FEMA's workforce is drawn nationwide from permanent employees, intermittent employees, and contractors, these staff—generally assigned to areas away from their homes—may lack the commitment for long-term assignments, as well as knowledge of critical local issues, such as contractor availability and pricing. Further, FEMA sometimes transfers these employees to other disaster sites before the recovery process is completed at the site to which they were initially assigned. This results in a “revolving door” effect and has been exacerbated because FEMA has not established permanent offices in those states most vulnerable to recurring, large-scale disasters. It has also been affected by tax implications and federal annuitant offsets for extended temporary duty, essentially disincentivizing employees from continuing their employment in a stable, long-term capacity.

Another area of concern is the lack of sufficient experience and training throughout FEMA's workforce. Following a disaster declaration, FEMA employs many local, intermittent, and contract personnel who may have little experience in, or knowledge of, FEMA's PA Program policies and procedures. These employees do not receive formal training until after a disaster has occurred, and even that training provides only basic classroom instruction—sometimes delivered by temporary personnel, as well.

FEMA has identified several areas of planned improvement in its personnel system, including development of a credentialing system—designed to assure that employees deployed to a disaster are qualified to perform their duties—as well as a single resource that includes all of FEMA's PA publications and policies. FEMA testified before the U.S. Congress in 2007 that such improvements are forthcoming. Although that position was reiterated to us during the course of our fieldwork, we have yet to see any of these ideas finalized and fully implemented. I will note that the CAP we received last week does outline a number of actions FEMA is taking but again, full implementation is lacking.

Specific recommendations we made to address FEMA's workforce challenges include:

- Restructuring the workforce into sufficiently staffed regional cadres, and deploying personnel only to the geographic area in which they reside (unless a nationwide deployment in response to a catastrophic disaster is necessary);
- Developing a recruitment plan to target local candidates when long-term disaster recovery efforts will be needed;
- Requiring that project officers document project activity and ensure that all information is conveyed to their successors during the recovery process—consistent with their responsibilities outlined in federal regulation;
- Expediting the implementation of a standardized credentialing system; and
- Expediting the completion and dissemination of consolidated PA guidance.

Further, we suggest that the U.S. Congress consider providing: (1) authority for an extension or waiver of annuitant and residency stipulations as they affect FEMA disaster personnel assisting the response and recovery efforts for large-scale disasters; and (2)

funding for FEMA to establish a permanent, full-time cadre of professional trainers who will comprehensively educate all FEMA disaster personnel prior to, and independent of, a disaster.

Performance Measurement

FEMA's performance objectives and performance measurement methodology—centered on timeliness and customer satisfaction—need to be clarified and improved to produce more meaningful and useful results.

FEMA's current methodology for measuring how timely FEMA obligates funding after a disaster declaration does not assure meaningful results because it gives equal weight to all disasters, regardless of magnitude. Thus, an inability to fund larger, more complex, disasters in a timely manner could be obscured by timely performance in funding the far more numerous, but less complex, smaller disasters. For example, if FEMA obligates funding in a timely manner for nine small disasters, but does not achieve timeliness for a large-scale disaster, its current performance assessment methodology would indicate that FEMA was 90% successful.

Another performance objective revolves around FEMA's ability to close disasters in a timely manner. However, FEMA's National Emergency Management Information System (NEMIS) does not include a function that can perform this measurement. FEMA officials told us that the next-generation system (the Emergency Management Mission Integrated Environment, or EMMIE) will include this functionality for all current disasters entered into its system. Nevertheless, a similar problem exists with this objective, as in the prior one, in that it does not differentiate between disaster magnitudes. As such, FEMA's ability to close small disasters in a timely manner may obscure the untimely closeout of large-scale disasters.

FEMA's last performance objective centers on customer satisfaction. However, FEMA has not measured its performance in this respect due to the suspension of data collection pending the request for, and the Office of Management and Budget (OMB) approval of, FEMA's customer satisfaction survey. Although OMB has recently provided approval for the survey, as currently planned, the measurement of this objective will make no distinction between the views of those subgrantees with varying degrees of damage. Thus, higher customer satisfaction with FEMA's performance on many smaller disasters could obscure customer dissatisfaction on large-scale disasters.

More meaningful performance measurement could be achieved if FEMA introduced weighted measures to differentiate between disasters of different magnitudes when assessing timeliness of funding and close-out, as well as customer satisfaction.

To ensure that the results of FEMA's measurements of performance objectives are meaningful, Congress may want to consider providing criteria for FEMA to use in categorizing disasters by magnitude (such as small, large, and catastrophic, etc.).

Alternatives to Streamline the PA Process

We identified various alternatives that could be employed to streamline the PA process. Although these alternatives represent opportunities to improve the program, each alternative presents drawbacks. Those alternatives that we explored include:

- 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.

Despite the challenges presented here, we learned that many of FEMA's customers consider the current PA Program design inherently sound. They believe the flaws are primarily in execution. Consequently, we are in agreement that most of these challenges could be significantly diminished by focusing on the fundamentals upon which the PA Program rests.

There are times, however, when FEMA and its grantees and subgrantees reach an impasse in the application and appeals process. Hurricane Katrina occurred five years ago, yet there are still critical public assistance projects that have not been funded.

Arbitration

In an effort to break the impasse that sometimes leaves PA applications in limbo for years, Congress enacted legislation that established an arbitration process for PA projects related to Hurricanes Katrina and Rita.

On Feb. 13, 2009, Congress passed the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). Section 601 of the law requires the President to establish an arbitration panel to expedite the recovery efforts from hurricanes Katrina and Rita. The law limits the arbitration process to projects totaling more than \$500,000.

FEMA published a final rule in the Federal Register, establishing the arbitration process, on August 31, 2009. The rule sets forth the eligibility criteria for arbitration and makes clear that applicants may choose arbitration in lieu of the appeals process. An applicant cannot do both.

The arbitration services are being provided by the Civilian Board of Contract Appeals (CBCA), which convenes three-judge panels for the purpose. A decision of the majority of the panel is final and binding on all parties.

As of September 9, 2010, there were 25 arbitration requests, 20 of which have been decided. In four cases, the panel found in favor of the applicant. The most well-known of these arbitration cases is Charity Hospital, in which the arbitration panel awarded the applicant \$474 million for replacement of the hospital. Five cases have been decided in favor of FEMA. In eleven cases, the dispute was either settled outside of the arbitration process or the panel provided for a settlement somewhere between what the applicant requested and what FEMA argued the amount should be.

Some in Congress believe the arbitration process should be extended to other disasters. We suggested in our report on public assistance policies and procedures that FEMA should consider establishing a mediation or arbitration process for appeals that have reached an impasse. We are currently monitoring the arbitration cases and plan to conduct work in this area to determine whether the arbitration option provides a means of speeding assistance to communities while protecting the interests of American taxpayers.

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