

Department of Homeland Security **Office of Inspector General**

LA County Charges FEMA for Unauthorized Fringe
Benefits Costs: Second Interim Report on
FEMA PA Grant Funds
FEMA Disaster Number 1577-DR-CA





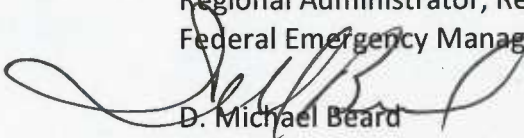
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

APR 9 2013

MEMORANDUM FOR: Nancy Ward
Regional Administrator, Region IX
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *LA County Charges FEMA for Unauthorized Fringe Benefits*
Costs: Second Interim Report on FEMA PA Grant Funds
FEMA Disaster Number 1577-DR-CA
Audit Report Number DS-13-07

We are currently auditing Federal Emergency Management Agency (FEMA) Public Assistance Program (PA) grant funds awarded to Los Angeles County, California (County), PA Identification Number 037-99037-00. Our audit objective is to determine whether the County accounted for and expended FEMA PA grant funds according to Federal regulations and FEMA guidelines.

The California Emergency Management Agency (Cal EMA), a FEMA grantee, awarded the County \$54.9 million for costs resulting from storms, flooding, debris flows, and mudslides during the period of December 27, 2004, through January 11, 2005.¹ The award provided 75 percent FEMA funding for 143 large projects and 35 small projects.² Our audit covered the period from December 27, 2004, to August 15, 2012. We are in the process of auditing a total of 108 large projects, with total awarded funding of \$44.8 million. We are comprehensively auditing 12 of those projects—with total awarded funding of \$17.0 million—and auditing 96 projects—with total awarded funding of \$27.8 million—exclusively for funds that can be deobligated and put to better use.³

The purpose of this memorandum is to advise you that although we have not yet completed our final report on the County for the aforementioned disaster, we nevertheless identified a systemic fringe benefit issue that requires immediate attention.

¹ At the time of this disaster, the grantee's name was the Governor's Office of Emergency Services, which became part of Cal EMA on January 1, 2009.

² Federal regulations in effect at the time of the disaster set the large project threshold at \$55,500.

³ This interim report presents findings related to 6 of the 12 projects comprehensively audited.



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We conducted this segment of this performance audit between February 2012 and August 2012, pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster. At the conclusion of our audit, we plan to issue our final audit report (notwithstanding the issuance of any additional interim reports), including any other findings and recommendations.

We interviewed FEMA, State, and County officials; judgmentally selected project costs (generally based on dollar value); evaluated applicable Federal regulations and FEMA guidelines, as well as previously-issued audit reports and audit documentation relating to the County's grant award; and performed other procedures considered necessary to accomplish our audit objective. We did not assess the adequacy of the County's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the County's method of accounting for disaster-related costs and its policies and procedures for administering activities provided for under the FEMA grant.

RESULTS OF AUDIT

County officials claimed \$111,835 in straight-time labor fringe benefits costs that were ineligible according to Federal regulations and FEMA guidelines. These costs are ineligible because they are unrelated to the County staff who performed work in response to the Federally declared disaster (1577-DR-CA). FEMA concurs that these costs are ineligible, yet has not taken appropriate corrective action to recoup these funds. County officials have said that they have charged, and will continue to charge, these ineligible fringe benefits costs based on their interpretation of Federal rules and regulations.

LA County Charged FEMA for Unauthorized Fringe Benefits

County officials improperly claimed \$111,835 in ineligible straight-time labor fringe benefits costs for six of the projects we reviewed under FEMA Disaster 1577-DR-CA (see table 1).⁴ The costs in question did not pertain to the current workforce; rather, they

⁴ Of the 12 projects comprehensively audited, straight-time labor fringe benefits costs were either inapplicable or immaterial for 6 projects, and therefore were not reported.



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related to an underfunded liability associated with a previously existing obligation. Thus, they were not applicable for employee fringe benefit costs incurred in relation to the relevant (eligible) disaster.

Project	Fringe Benefits Claimed	Fringe Benefits Costs Questioned
2274	\$58,976	\$16,572
2275	29,526	8,554
2996	73,738	20,957
3095	64,781	18,690
3108	112,016	28,878
3128	62,697	18,184
Total	\$401,734	\$111,835

Specifically, the County funds pension obligations for current employees using an actuarially determined Annual Required Contribution (ARC) based on mortality rates, salary increases, assumed rate of investment income, and other relevant assumptions. This is an acceptable methodology for determining allowable fringe benefit costs in accordance with FEMA’s disaster assistance regulations. However, in allocating fringe benefit costs to their projects, County officials used the ARC and three additional cost components—Pension Obligation Certificates, Taxable Pension Obligation Bonds, and Retiree Health Insurance—as part of the fringe benefits rate applied to force account labor hours—which did not benefit County staff who performed work related to the Federally declared major disaster(s). The methodologies for arriving at those additional costs are described below.

- Pension Obligation Certificates (POCs).⁵ In December 1986, the County issued \$462 million in POCs. Proceeds were used to reduce the retirement system’s underfunded liability by \$473 million for its then current and former employees covered by the pension system. County records identified that the annual funding requirement to retire the outstanding POCs extends through 2015.
- Taxable Pension Obligation Bonds (TPOBs). In October 1994, the County issued \$2 billion in TPOBs to address its unfunded accrued actuarial liability (estimated as of June 1992) for its then current and former employees covered by the pension system. County records identified that the annual funding requirement to retire the outstanding TPOBs extends through 2015.

⁵ The County’s records also refer to the POCs as Retirement Certificates of Participation.



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- Retiree Health Insurance (RHI). RHI represents benefits paid to nearly 51,000 retirees and their dependents enrolled in postemployment medical, hospital, dental, and vision plans. The entry on the County's general ledger represents the County's (pay-as-you-go) portion of the premiums paid in conjunction with enrolled retirees.

Federal regulations and rules prohibit the inclusion of these costs in the County's claim(s).

- 44 CFR 206.228(a)(4) specifies that the straight-time salaries and benefits of a subgrantee's permanently employed personnel engaged in performing eligible permanent restoration under section 406 of the Stafford Act (42 U.S.C. 5172) are eligible for Federal assistance.
- Office of Management and Budget (OMB) Circular Number A-87, Attachment B, Section 8(d)(5) dictates that the cost of fringe benefits "...shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities."⁶

We therefore question a total of \$111,835 in ineligible costs for Projects 2274, 2275, 2996, 3095, 3108, and 3128 that were unrelated to the disaster.

County officials told us that, despite our previous findings and recommendations, they have not adjusted the straight-time labor fringe benefits rates because of their interpretation of Federal rules. County officials stated—earlier and presently—that they will continue to claim these straight-time labor fringe benefits costs because they fundamentally disagree with our standpoint on the Federal rules and regulations that govern the accounting and expenditure of these costs.

Specifically, County officials disagreed with our conclusion (and FEMA Region IX officials' concurrence) that the additional costs could not be included with their fringe benefits, because they claim that OMB Circular Number A-87 authorized the reimbursement of such costs.⁷

We informed County (and FEMA) officials that 44 CFR imposed limitations on the type of costs that applicants can claim for fringe benefits for employees engaged in disaster

⁶ Office of Management and Budget Circular A-87 (Revised) was relocated to Title 2 in the Code of Federal Regulations (2 CFR), Part 225, on August 31, 2005, as part of an initiative to provide the public with a central location for Federal Government policies on grants and other financial assistance and nonprocurement agreements (*Federal Register*, Volume 70, Number 168).

⁷ For example, see DS-10-07; Page 6, Finding B, last paragraph (http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-10-07_Apr10.pdf).



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work.⁸ County officials asserted that when a conflict exists between OMB Circular A-87 and 44 CFR, the Circular supersedes and becomes the governing criteria. That interpretation of the law is not correct.

OMB Circular A-87, Attachment A, Section C.d, provides that for a cost to be allowed, it must “conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.” Additionally, the *Implementation Guide for Office of Management and Budget Circular A-87* specifies in Section 1.4 (*Relationship of Circular A-87 to Agency Regulations and Federal Statutes*) that, “...if a statute passed by Congress prescribes policies or procedures that differ from those in the Circular, the provisions of the statute govern. For example, it is not uncommon for Congress to enact legislation that restricts certain items of costs (i.e., limitations on indirect or administrative costs). When such a restriction exists, it is binding.”

FEMA officials generally concur with our findings and recommendations on this matter. Cal EMA officials have indicated that they understand our perspective, in addition to that of the County, and will therefore remain neutral on this issue. Despite our advisement otherwise, and FEMA’s general concurrence with our findings, County officials said that they will continue to include the same fringe benefits rates in their claim for Federal reimbursement because (1) Federal rules, based on their interpretation, enable them to do so, and (2) FEMA officials have thus far not disallowed these costs (see table 2).

LA County Previously Charged FEMA for Unauthorized Fringe Benefits

From 2006 to the present, we have repeatedly identified that LA County improperly charges FEMA for ineligible straight-time labor fringe benefits costs claimed under various FEMA PA disasters/grants that do not relate to the workforce actually engaged in the work associated with these disasters (see table 2). FEMA officials ultimately concurred with our audit findings and recommendations regarding the ineligibility of these costs, yet (previously) reversed their management decision to disallow these costs and have not taken appropriate corrective action to recoup the unauthorized (questioned) costs.

⁸ For example, please refer to the response (page 6 and footnote 6) presented in our Report DS-10-07 (http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-10-07_Apr10.pdf).



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Table 2. Previous Audits of LA County FEMA PA Grant Funds Questioning Straight-Time Labor Fringe Benefits Costs				
OIG Audit Report⁹	Date of Report Issuance	FEMA Disaster Number	Questioned Costs	FEMA Recoupment of Questioned Costs
DS-05-06	July 3, 2006	1008-DR-CA	\$197,347	No
DS-10-07	April 23, 2010	1585-DR-CA	87,295	No
Total			\$284,642	

Our audit of FEMA Disaster 1008-DR-CA, issued in 2006, identified that the County charged FEMA \$197,347 in unauthorized fringe benefits costs. FEMA officials concurred with our audit findings and subsequently deobligated these ineligible costs. However, County officials appealed that decision on the basis that the costs were eligible according to Federal rules, and FEMA (Region IX) officials consequently approved the County’s appeal—thereby reobligating the funding they originally deobligated pursuant to our audit recommendation. Because FEMA is required to notify us concerning the actions it takes in response to our recommendations, FEMA should have notified us of this change in its decision. However, we have no record that FEMA officials notified us of the reobligation of funds subsequent to their concurrence with our findings and deobligation of ineligible funding. Nevertheless—after our successive advisement with FEMA officials on applicable Federal rules, regulations, and FEMA guidelines in relation to our audit work on these matters—FEMA officials ultimately concurred with our findings and recommendations. In September 2012, we inquired to FEMA officials regarding the status of FEMA’s recoupment of the ineligible funding questioned in our audit report. FEMA officials have not yet responded.

Our audit of FEMA Disaster 1585-DR-CA, issued in 2010, identified that the County charged FEMA \$87,295 in unauthorized fringe benefits costs. FEMA officials concurred with our audit findings and indicated that they would take corrective action and process the deobligations once the grantee has submitted its project completion and certification. In September 2012, we inquired to FEMA officials regarding the status of FEMA’s recoupment of the ineligible funding questioned in our audit report, and were told that FEMA officials have received and evaluated documentation related to the issue of the County’s fringe benefit rates, and will issue a response later.

FEMA officials said that deobligating (and in this case, disallowing ineligible) funding in a timely manner can improve FEMA’s overall management of a disaster and make funding

⁹ Please refer to http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-05-06.pdf for DS-05-06 and http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-10-07_Apr10.pdf for DS-10-07.



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available for other disaster projects.¹⁰ Consequently, FEMA should take action on these questioned costs.

FEMA officials' concurrence with our recommendation(s), and the subsequent corrective actions they implement, constitute a binding management decision. Per the *Inspector General Act of 1978*, as amended, the Office of Inspector General (OIG) has reporting requirements—including reporting on recommendations, corrective action(s), and recommendations that the agency did not implement—for each respective semiannual report to the Secretary and to the U.S. Congress.¹¹ Any deviation from previously resolved recommendations/corrective actions represents a management decision reversal that we must report.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IX:

Recommendation #1: Disallow a total of \$111,835 (Federal share \$83,876) in ineligible fringe benefits costs claimed for Projects 2274, 2275, 2996, 3095, 3108, and 3128.

Recommendation #2: Coordinate with grantee officials to resolve our previous recommendations to disallow ineligible straight-time fringe benefits (questioned) costs identified in audits DS-05-06 (\$197,347; Federal share \$148,010) and DS-10-07 (\$87,295; Federal share \$65,471); and inform us of the actions that will be taken.

Recommendation #3: Advise the County on the proper method for accounting for eligible fringe benefit costs in relation to Federal regulations, rules, and FEMA guidelines.

Recommendation #4: Review all the other applicable County projects for FEMA Disaster 1577-DR-CA, not included in our audit sample, for additional ineligible straight-time labor fringe benefits costs claimed for Federal reimbursement, and disallow those costs.

Recommendation #5: Establish procedures to notify the OIG timely if it reverses any management decision on audit recommendations previously accepted/resolved.

¹⁰ For example, please refer to http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-09-05_May09.pdf.

¹¹ Please refer to the *Inspector General Act of 1978*, as amended; Section 5; Semiannual Reports.



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DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed these results with County officials during this interim audit and have included their comments in this report, as appropriate. We also provided a written summary of our findings and recommendations in advance to FEMA, Cal EMA, and County officials on August 2, 2012. We discussed the findings and recommendations at an exit conference with Cal EMA officials on August 15, 2012. FEMA and County officials declined an exit conference and indicated that they will withhold additional comments until after we issue our final report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. The recommendations will be considered open and unresolved until your response is received and evaluated.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Major contributors to this report are Humberto Melara, Western Regional Office Director; Devin Polster, Supervisory Analyst; Ravi Anand, Senior Auditor; Paul Sibal, Auditor; and Montul Long, Auditor.

Please call me with any questions, or your staff may contact me at (202) 254-4100 or Humberto Melara at (510) 637-1463.



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APPENDIX

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