

BUDGET LETTER

	NUMBER: 98-03
SUBJECT: DISASTER FINANCING	DATE ISSUED: MARCH 25, 1998
REFERENCES:	SUPERSEDES: 97-02

TO: Agency Secretaries
Department Directors
Departmental Budget Officers
Departmental Accounting Officers
Department of Finance Budget Staff

FROM: DEPARTMENT OF FINANCE

This letter provides information related to the procedures that state departments need to use in order to recover disaster-related costs. As noted below, disaster-related costs may be recoverable from the Federal Government. It is also possible that additional state funding may be necessary, although any such funding proposal must be evaluated on a case-by-case basis. Departments must keep records as to the amount of disaster-related costs.

This letter deals only with and provides an overview of the Federal Emergency Management Agency (FEMA) procedures relevant to the repair or replacement of facilities under the purview of state departments and the concomitant roles of the Office of Emergency Services (OES) and the Department of Finance. Procedures pertaining to disaster assistance funds provided by federal agencies other than FEMA are not covered in this letter, e.g., procedures related to funding available from the Department of Housing and Urban Development for repair of flood damage to homes in California.

It is the policy of this Administration that departments maximize their use of federal funds available for disaster assistance in order to enhance recovery efforts and limit General Fund expenditures.

In most instances, state departments that have incurred costs or losses because of the recent floods need to be seeking **reimbursement** from FEMA through OES. The OES is the state applicant/grantee for all local and state government claims submitted to FEMA. Individual local governments and state departments are sub-grantees. All sub-grantee claims for reimbursement from FEMA and all FEMA payments to sub-applicants must flow through OES.

An important part of OES' role is to assist departments in obtaining federal reimbursement. While OES will not support a claim which appears to be incorrect, OES functions as an advocate on behalf of state departments in dealing with FEMA. All departments with costs associated with a disaster are responsible for initiating timely claims to OES for reimbursement and for preparing and maintaining adequate cost information and documentation.

When FEMA approves and obligates funding for an applicant state department, OES will promptly notify the Department of Finance and the applicant department of that approval. Funds are then available for disbursement from OES to the applicant department, in accordance with the rules

described under the "FEMA Process" section. Departments receiving these funds may need to process a Budget Revision to schedule the anticipated reimbursements. When required, a letter of notification to the Legislature must be prepared under the provisions of Section 28.50 of the Budget Act.

Types of Losses and Costs

Departments may have incurred one or more of several types of losses, costs, or damages related to recent floods including, but not limited to:

- replacement of damaged or destroyed facilities and/or equipment;
- unplanned expenses for:
 - * health and safety emergency response;
 - * emergency transportation;
 - * emergency communication;
 - * emergency relocation;
 - * mutual aid;
 - * demolition and debris removal;
 - * repair of damaged facility structures; and
 - * administration of a program affected by a disaster (e.g., processing unemployment insurance applications or providing temporary housing assistance to homeless persons).

The FEMA regulations broadly define the types of projects and project costs eligible for federal reimbursement. While some of the aforementioned examples of costs may not be eligible for FEMA reimbursement in a given situation, many will be eligible. Any department which believes its costs may be eligible for FEMA reimbursement should submit a claim to OES and have OES and FEMA make the eligibility determination. Some costs may not be reimbursable by FEMA but may be billable to other federal agencies.

FEMA Process

Federal funding for the costs of emergency response, debris removal and emergency protection measures related to recent flooding in counties which have been declared federal disaster areas will be provided on an expedited basis. Attached is a copy of a Joint Bulletin issued by FEMA and OES on February 13, 1998 describing the expedited process.

In order to participate in the FEMA process, each state department must first file a "**Notice of Interest**" (**NOI**) with OES, Disaster Assistance Division. The NOI is a simple one-page form that reserves a state department's right to submit a loss claim at a later date. Each applicant is required to identify the category of costs which it incurred as a result of the flood, including: (A) debris clearance, (B) emergency response, (C) road system, (D) flood control facilities, (E) buildings and equipment, (F) public utility systems, and (G) other, such as parks and recreational facilities.

The NOI for each department must be filed within 30 days of the date the President issues a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Any department which is a potential applicant should immediately contact Roy Hickey, Public Assistance Section, Program Support, OES at 464-1060. According to OES, NOIs pertaining to the recent floods must be submitted to FEMA through OES by April 13, 1998. However, OES staff indicate that, under compelling circumstances, FEMA may approve extensions of up to 30 days beyond this date.

During last year's floods (DR-1155), FEMA delayed the approval of most state agency NOI's because FEMA believed that all costs should be claimed under the NOI filed by either the OES or the California National Guard. FEMA has now agreed in writing to approve individual state agency NOI's for both DR-1155 and the current floods (DR-1203) using the following guidance language:

“State Agency Response Costs: State agencies will be reimbursed directly (to the State via OES) for eligible response costs associated with mission assignments issued by the state as well as those costs incurred under their own statutory authority. Any direct support or services provided to a local agency by other means will not be reimbursed directly to the responding state agency. The state agency providing assistance or services to local agencies may provide a bill to the recipient agency for the cost of these services, and the recipient agency may seek reimbursement of any eligible costs in accordance with the Disaster Assistance Program.”

In other words, response services provided by state agencies with assigned Disaster Response mission numbers will be reimbursed directly to those agencies. However, for response services provided under a contract or other arrangement with local agencies, the state agency must bill the recipient local agency for those costs.

When a department is ready with documentation of its costs of emergency response and damages incurred, a joint federal-state team meets with the department to prepare a **Damage Survey Report (DSR)** for each category of costs presented by the department. A DSR must be prepared for ALL costs a department claims are related to the flood. The content of DSRs represents the best estimate of costs available at the time and, as such, provides a reasonably accurate basis from which FEMA can make a determination of project and cost eligibility for funding purposes. "Project" means the repair or restoration, or both, of real property of a public agency other than normal maintenance, or replacement. Project applications are often adjusted by supplemental applications. An applicant may request additional funding for new or additional work (subject to time deadlines) or for cost overruns occurring after approval of the original DSR. Costs claimed under Category (B) - emergency response, which includes typical disaster response costs such as fire suppression and law enforcement, also must be claimed through the DSR process.

At the time it is prepared, the DSR represents only a recommendation. The FEMA funding is not approved until DSRs for an applicant department are assembled into a completed application and approved by the Governor's Authorized Representative, normally a designee of the Director of OES and the FEMA Regional Director or authorized designee.

An applicant must agree to adhere to assurances contained on the state **Application Form** prior to receipt of any federal funding. These assurances deal specifically with issues such as competitive procurement, contract and grant administration, insurance, and other federal rules and regulations.

Current regulations provide that the federal share will be 75 percent of eligible costs, in excess of base costs. Base costs are generally defined as the salary and benefits of personnel who normally respond to emergency situations (i.e., police officers and firefighters). Overtime costs of emergency personnel, costs of staff reassigned from other duties, and extra hires would be in excess of base costs.

The 25 percent non-federal share of costs must be met by state and/or local agencies. The OES is authorized by FEMA to provide applicants with the total federal share for small construction projects (less than \$47,100) immediately upon notification of obligation by the federal government. An applicant may request up to 90 percent of the federal share for work completed or costs incurred on portions of approved large construction projects (\$47,100 or more). Advances may be requested; however, except as noted above, it is uncertain to what extent FEMA will fund them.

Final settlement (i.e., payment of the remainder of the federal share) occurs after the applicant has completed all approved work and paid all related bills. When an applicant files a final claim summarizing expenditures for all approved work, FEMA or OES schedules a final inspection to evaluate all completed projects. Final payment normally is made upon completion of a final inspection. Depending upon the size and complexity of the claim, final settlement may occur from weeks to years after submission of a DSR.

Under the FEMA-state agreement governing assistance grants provided by FEMA in recent disasters, the State is only obligated to comply with the requirements of the Single Audit Act. Accordingly, it is not required that every department undergo a separate federal compliance audit upon receipt of FEMA funding. However, separate compliance audits may be performed as deemed necessary by OES, the State Controller, the Department of Finance Office of State Audits and Evaluations, the Bureau of State Audits and/or the FEMA Office of the Inspector General to evaluate documentation of losses and costs incurred because of these disasters.

The primary responsibility for managing approved projects rests with applicant agencies. Eligible work may be performed by the applicant using its own personnel and equipment, or by contract. In either case, the applicant is required to maintain clear and concise disbursement and accounting records of the costs incurred as a result of approved disaster work. **Each agency must be able to document its cost by DSR.** The FEMA and the State require that supporting documentation must be available at one central office location, and in most cases, the auditors must have access to original source documentation.

At times, FEMA has required state agencies who do work for local entities to keep records of the amount of time allocated to each agency. The OES is working to minimize such FEMA requirements. However, state agencies need to keep records as to the costs incurred in assisting each local agency, in case questions arise.

Costs Not Reimbursed by FEMA

The FEMA will provide reimbursement for its share of the "eligible" costs for each applicant "project". Departments may submit requests to the Department of Finance for the additional state share. They may also request funding for costs not considered eligible by FEMA, and for funding to cover cash flow problems pending FEMA reimbursement for eligible costs. However, whether or not additional

funds will be provided to departments beyond their current budget authorizations will be evaluated on a case-by-case basis. These requests for additional funds must be approved by the Director of Finance and require notification to the Legislature.

There are several factors which the Department of Finance will take into account in reviewing departmental requests for disaster-related funding:

- Immediate health and safety concerns are paramount. Requests for funding to deal with such issues should be reviewed expeditiously.
- Ensure that a department's long-term ability to perform its mission is not reduced as a consequence of losses incurred because of disasters.
- No department should realize a significant increase in its resources or betterment of its condition as a consequence of disasters, unless the betterment is incidental to necessary recovery actions.
- State funds should only be allocated for net out-of-pocket additional costs not otherwise eligible for FEMA reimbursement coverage.
- No augmentation from state resources will be provided if the requesting department has failed to first seek available federal aid. Documentation of any federal denials must be retained.
- Requests for cash flow augmentations pending receipt of federal reimbursements should be granted only when demonstrable evidence exists showing that departmental operations would be significantly adversely affected in the absence of cash flow assistance.

Specific Situations

Listed below are examples of the types of funding requests which should be submitted to the Department of Finance. The examples are not necessarily mutually exclusive. For instance, a deficiency request also may involve a cash flow problem. These examples are intended to help clarify the nature of likely funding requests and how to approach them.

1. **Additional Funding**. Some departments may require funding in addition to existing appropriations because of emergency response or damage costs. A department in this situation should forward to the Department of Finance a request for additional funding documenting the reason for the need for additional funds. If the request for additional funds is approved, it will be funded through an Executive Order. The Legislature must be notified prior to transmittal of the Executive Order to the State Controller. However, for funds provided less than one year after a disaster declaration, a thirty day waiting period is not necessary, per Government Code Section 8690.6. No other notice (e.g., Section 27.00) is required.

If additional funds are provided from a source other than the General Fund, the process pursuant to Government Code Section 8690.6 is not applicable. In this case, the process specified in Section 27.00 of the Budget Act is to be followed.

2. **Cash Flow Pending Federal Reimbursement.** Since FEMA often will not advance funds for costs related to most eligible projects, departments will have to pay the costs of response and recovery initially from within existing budgeted resources, or seek an augmentation from the Department of Finance. In reviewing cash flow requests, Finance staff will assess the likelihood of FEMA ultimately providing reimbursement for the costs involved and will consult with OES as needed to evaluate the probability that FEMA will consider the costs "eligible". The OES will forward all copies of approved DSRs pertaining to state agencies to the Department of Finance.

If reimbursement seems likely, Finance staff will then evaluate the feasibility and reasonableness of departments utilizing existing resources to cover initial outlays. It is preferable that redirection of existing resources be employed to handle cash flow issues. However, if significant program problems would result because of redirection, then a cash flow augmentation may be warranted.

(It should be kept in mind that approved DSR amounts are **only estimates** of costs reimbursed by FEMA. Actual costs and reimbursements may be above or below the estimate. Consequently, a cash flow advance based on a DSR could turn out to be more or less than the amount needed when actual costs become known.)

3. **Buildings--Capital Outlay.** Proposals to build entire facility structures, either combined with demolition or after demolition has been completed, shall be submitted in the form of a Capital Outlay Budget Change Proposal, for each separate project, to the Capital Outlay Unit, Department of Finance. This process is to be followed irrespective of funding source. Factors such as project urgency and available state funding will determine whether the project is funded.
4. **The State Match.** As previously mentioned, FEMA requires that the state fund up to 25 percent of eligible project costs. The State must have provided the match in each instance that a project is completed. The issue before the Department of Finance is whether the state match will be funded from the existing resources of a department or whether the department will be provided an augmentation to cover the match.

The outcome of the decision depends largely upon the type of costs incurred. For instance, if the cost involved is one of significant unbudgeted outlay for building repairs or equipment replacement, it may not be possible for a department to "absorb" that cost without adversely affecting program operations.

On the other hand, if the "cost" is the regular time of redirected staff, a budget augmentation will probably not be warranted. As an example, if firefighters in Northern California were transferred to a disaster area, FEMA probably would reimburse that department (the State) for its share of the costs of the firefighters' travel and overtime costs. (According to current FEMA regulations, salary for normal working hours on an employee's regular assignment and benefits are no longer allowable costs.) However, assuming that no temporary help was hired to backfill for the firefighters at their base of operations and salaries and benefits were already included in the department's budget for the very activity for which it was used (i.e., to pay firefighters' regular salaries), there would be no need to augment the firefighters' department budget.

5. **Non-FEMA Eligible Costs.** Generally, if FEMA does not recognize a cost as eligible for reimbursement, the Department of Finance will not recognize it as eligible for coverage by a budget augmentation.

Special circumstances may also be present in a given situation. If an augmentation is requested for a cost which is not FEMA eligible, but for which an augmentation appears to be warranted on the basis of a strong equity case, then approval of the request may be appropriate. Again, Finance staff will let the factors previously stated guide them in the determination of cost eligibility.

Department of Finance Process for State Funding

In addition to the usual methods for appropriating funds, under Government Code Section 8690.6, the Director of Finance may provide any department with an augmentation from the Special Fund for Economic Uncertainties (i.e., the General Fund "Reserve") through the Disaster Response-Emergency Operations Account.

This code section provides for the funding of disaster response costs through two steps. First, the Director of Finance is authorized to augment the Disaster Response-Emergency Operations Account from the Special Fund for Economic Uncertainties. Second, a continuous appropriation from the Disaster Response-Emergency Operations Account authorizes allocations by the Director of Finance to state agencies for disaster response costs incurred by state agencies as a result of a state of emergency proclamation by the Governor. These allocations may be for emergency protective measures for the preservation of life or property within the State, or for activities necessary for the resumption of regular state and local government operations and services.

Generally, allocations pursuant to Government Code 8690.6 are made for state operations and local assistance programs. Requests for funding of building repairs which do not involve substantial structural work will be treated as a support budget issue.

Requests from departments for funding under this code section must be forwarded for review and approval by the Department of Finance and must be accompanied by written documentation regarding the need for and consequences of not receiving the requested funds. When the issue involves a project covered by a DSR, Finance staff will look first to the DSR for guidance on eligible costs.

Recommendations by DOF staff to approve a departmental funding request will be submitted to the Director of Finance for approval. If the deficiency is to be funded through the normal Section 27.00 process, the notification letter to the Legislature must be prepared for approval by the Director's Office. However, the funding may be provided through the process authorized by Government Code Section 8690.6 as described above to the extent that FEMA funds are not sufficient or are not available to meet critical funding needs. This process requires that the responsible Department of Finance budget unit submit a package to the Director's Office which includes:

1. A notification letter to the Legislature pursuant to Government Code Section 8690.6.
2. Executive Orders allocating funds from (a) the Special Fund for Economic Uncertainties to the Disaster Response - Emergency Operations Account and (b) from the Disaster Response-

Emergency Operations Account to the department. These executive orders will be prepared by the Department of Finance. The executive orders must be dated at least one day later than the notification letter as Section 8690.6 provides that allocations may be made thirty days or less after notification.

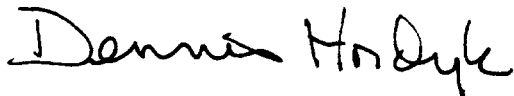
Receipt of FEMA Reimbursements

The FEMA reimbursements will be treated in the same manner as previous disaster funding provided by FEMA, i.e., OES will receive the funding, deposit it in their Federal Trust Fund account and treat the transfer of the money to the departments as a Federal Trust Fund expenditure in their accounting and budgeting documents. The departments receiving these funds will treat the receipts as reimbursements.

If it is necessary to increase a department's expenditure authority so that the FEMA reimbursement can be spent, then the provisions of **Section 28.50** must be followed.

If a state agency needs assistance related to FEMA reimbursements or documentation requirements, they should contact Paul Jacks, Chief, Disaster Assistance Resources Branch at (916) 464-1005. If a state agency needs assistance related to the FEMA process or program information, they should contact Nancy Ward, Chief, Disaster Assistance Programs Branch at (916) 464-1006.

If you have questions regarding this matter, please contact your Department of Finance budget analyst.



DENNIS HORDYK
Assistant Director

Attachment [Contact OES for a copy of the Joint Bulletin issued by FEMA and OES on February 13, 1998, describing the expedited process, "Notice of Availability of Expedited Funds for the 'El Nino 98' Floods (FEMA-1203-DR-CA)".]