COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

February 28, 2020

The Honorable Raúl Grijalva
US House of Representatives, Arizona District 3
1511 Longworth House Office Building
Washington, DC 20515

Re: **Indirect Expense Reimbursement for Accepting Operation Stonegarden Grant Funds**

Dear Congressman Grijalva:

Pima County and other counties along the United States/Mexico Border have been attempting to collect indirect expense reimbursement from Operation Stonegarden (OPSG) grants to partially offset the local taxpayer cost of accepting these grants for both administrative and pension costs. To date, our efforts have been unsuccessful even though most counties are eligible and do receive indirect expense reimbursement from the Department of Justice and other federal agencies.

I have enclosed a February 25, 2020 letter received by the Arizona Border Counties Coalition from Arizona Department of Homeland Security Director Gilbert Orrantia. (Attachment 1) Mr. Orrantia states the following:

> "Although the Department of Justice and Arizona Department of Emergency Management (ADEM) may have allowed a de minimis expense reimbursement, we are compelled to adhere to the guidance provided to us from US DHS/FEMA as the grantor of the Operation Stonegarden funds."

This letter is to request your assistance in obtaining the rationale and reasoning behind the US DHS/FEMA denial of indirect expenses for OPSG grants. We would also appreciate your referring this matter to the Department of Homeland Security's Inspector General since we have been unable to obtain any information, rationale or reasoning regarding our denial for indirect expenses from the agency.

Pima County has submitted a complaint on the DHS Office of Inspector General's Hotline, which is attached for your information. (Attachment 2) We would also appreciate your following up on this filed complaint.

Sincerely,

C.H. Huckelberry
County Administrator

CHH/anc

Enclosures

c: The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Mark Napier, Pima County Sheriff

ATTACHMENT 1

State of Arizona
Department of Homeland Security

Governor Douglas A. Ducey

Director Gilbert M. Orrantia

February 25, 2020

FEB27 12:58P

The Arizona Border Counties Coalition
C/O Pima County Office of Economic Development
130 W. Congress, 10th Floor
Tucson, AZ 85701

Re: Letter of February 11, 2020 regarding Full Reimbursement for Accepting Federal Grants Related to Border Security

Dear Arizona Border Counties Coalition members,

Thank you for your letter regarding Full Reimbursement for Accepting Federal Grants Related to Border Security.

On behalf of Governor Ducey and our department, I would like to further clarify the efforts that have been undertaken to interact with our federal partners (US Department of Homeland Security/FEMA) and the Arizona Department of Administration (ADOA) to attain appropriate direction regarding indirect expenses.

As indicated at the April 11, 2019 meeting, applicants are able to apply for reimbursement of indirect expenses. Until recently, applicants did not seek reimbursement for those costs. As a result of Pima County's request, guidance was sought from the authorizing agency for the Operation Stonegarden Grant Program (federal authority) as well as the Arizona Department of Administration (State authority) and other State agencies.

Although the Department of Justice and Arizona Department of Emergency Management (ADEM) may have allowed a de minimis expense reimbursement, we are compelled to adhere to the guidance provided to us from US DHS/FEMA as the grantor of the Operation Stonegarden funds. To do so otherwise may put our department at risk of noncompliance and potentially jeopardize USDHS/FEMA grant funding to the State of Arizona. Contrary to your understanding, the Arizona Department of Homeland Security (AZDOHS) is not a spinoff of ADEM nor is it a parent agency. Therefore, it would not be appropriate to consult with or implement their policy on this matter.

Regarding the exception determination being considered by Bridget Bean, Assistant Administrator, Grant Programs Directorate, FEMA initially submitted on January 10, 2020; AZDOHS has subsequently followed up contact with FEMA on January 27, 29, and February 14, 2020. Based upon the most recent contact, a response to Pima County is forthcoming. As mentioned in our October 30, 2019 letter to you, USDHS/FEMA provides the final guidance regarding recovery of indirect costs.

We appreciate and understand your concerns. We assure you that AZDOHS will continue to interact with USDHS/FEMA on a regular basis to urge a timely response to the exception request submitted by Pima County.

Sincerely,

Gilbert M. Orrantia
Director

1700 West Washington Street Phoenix, Arizona 85007
Office: (602) 542-7030 Fax: (602) 364-1521 www.azdohs.gov

cc: The Honorable Mark J. Dannels, Cochise County Sheriff
The Honorable Tony Estrada, Santa Cruz County Sheriff
The Honorable Leon N. Wilmot, Yuma County Sheriff
The Honorable Mark Napier, Pima County Sheriff
Edward Gilligan, Cochise County Administrator
Jennifer St. John, Santa Cruz County Administrator
Susan K. Thorpe, Yuma County Administrator
Chuck Huckelberry, Pima County Administrator
Megan Fitzgerald, Office of Governor Ducey

ATTACHMENT 2

DHS OIG Hotline Complaint Form

You have successfully submitted your complaint to the DHS OIG. For reference purposes, you have been assigned Reference Number:

HLCN1581125247594

Please retain this number for your records.

We will review your complaint and contact you if more information is needed. This receipt is not an indication your complaint will be investigated by the DHS OIG or any other applicable investigating body.

Thank you for contacting the DHS OIG with your concerns.

Click here to return to the DHS OIG home page: http://www.oig.dhs.gov/ (http://www.oig.dhs.gov/).

DHS OIG Hotline Complaint Form

1. Complainant Information 2. Allegation Details 3. Additional Details 4. Other Actions 5. Upload Documents

Part I - Complainant Information

Your selection of one of the filing options below implies you have reviewed the information and understand the choice you are making. Please decision to elect anonymity may limit our ability to conduct an inquiry, if one is warranted, or to appropriately address your issue. In the event c you for additional information or clarification, please consider providing your name and/or contact information to allow for follow-up contact if ne cannot be processed without your election below.

(*) Required Information

- (●) I am submitting the complaint myself.
- ( ) I am submitting the complaint on behalf of someone else.
- ( ) I am submitting this complaint as a DHS internal affairs agency.

Please Select One*

Complainant wishes to:

( ) Option 1: Remain anonymous. It is understood that this may hinder DHS OIG's ability to thoroughly review and/or resolve the allegations in tl information that is provided anonymously may be referred to another agency if DHS OIG determines that action by another agency is warranted

( ) Option 2: Disclose identity to DHS OIG, but request that DHS OIG keep the identity confidential with respect to individuals outside DHS OIG. DHS OIG's ability to thoroughly review and/or resolve the allegations in the complaint. It is also understood that, despite the request for confident DHS OIG to disclose the identity to individuals outside DHS OIG if DHS OIG deems such disclosure (1) necessary during the course of DHS OIC allegations in the complaint, or (2) otherwise required by law.

(●) Option 3: Disclose identity to DHS OIG and authorize DHS OIG to further disclose individuals and/or entities identity outside DHS OIG on a r

Complainant

Prefix (Mr.,Mrs.,Ms.,etc.) Mr

First name Chuck MI H Last name Huckelberry

Suffix (Jr., Sr., II., etc.)

Address Type: ( ) Home (●) Work

Company Name Pima County

Address: 130 West Congress St 10th floor

City: Tucson State/Territory: Zip: 85701

Country/Region: United States

*** Either Phone or E-mail is required**

Primary Phone: 520-724-8751 Email: chuck.huckelberry@pima.gov

Is the complainant a current DHS employee, former DHS employee, or DHS contractor? * ( ) Yes (●) No

Filing Category: State / Local Government Employee

Employer: Pima County

Title: County Administrator

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DHS OIG Hotline Complaint Form

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Part II - Allegation Details

Use this section to clearly describe your complaint. If you would like additional information about filing a reprisal complaint, plea
(https://www.oig.dhs.gov/whistleblower-protection).

IDENTIFY THE SUBJECT(s) - WHO COMMITTED THE ALLEGED WRONGDOING?

(*) Required Information

Subject: Federal Emergency Management Agency (DHS)

Subject: U.S. Customs and Border Protection (DHS)

Add Subject

IDENTIFY ANY ADDITIONAL INDIVIDUALS RELEVANT TO THE COMPLAINT

Add Victim **Add Witness**

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Part III - Additional Details

(*) Required Information

We can best process your complaint if we receive accurate and complete information. Provide a summary of your complaint, to include an eve appropriate.

If your complaint involves contractor fraud, provide the name of the primary contractor, subcontractor, type of contract, contract #s, date of con of agency official(s) if known.

Allegation Category	Miscellaneous
DHS Affected Agency	Federal Emergency Management Agency (DHS)
What did the person(s) do or fail to do that was wrong?*	As was made clear in your office's November 2017 report, FEMA and CBP Oversight of Operat Needs Improvement, administration of Operation Stonegarden funds has been inconsistent, bo programmatically. State Administrative Agencies (SAA) apply for the funding then pass throug governments. The SAA then provides monitoring oversight of the subgrantees to assure that fu FEMA, U.S. Customs and Border Patrol and Federal Grant requirements. The enacting of 2 C.F make grants administration more uniform both for the grantors and grantees. It is clear that agencies are interpreting the guidance in multiple ways that often conflict with bo
When did the incident(s) occur?*	March 2019 - present (please see Attachment C)
When were you made aware of the problem(s)?	June 2019
Where did the incident(s) take place?	Arizona
What rule, regulation, or law do you believe to have been violated?	Under 6 U.S.C. § 609(b), the limitations on use of funds does not include indirect costs. Annou specifically acknowledge that indirect is an allowable expense. Failure to allow indirect expens United States Code that makes this funding available. Additionally, it is contrary to the Code of C.F.R § 200.331(a)(4)) which requires that a pass-through entity accept a subrecipient's de mir meets the requirements of §200.414(f), which Pima County does.
Briefly summarize how you believe our office can assist you regarding your matter.	Pima County believes the Office of the Inspector General can assist us with understanding and inconsistencies that we are experiencing with FEMA on humanitarian aid and indirect cost rates our Board of Supervisors to reject the FY18 OPSG award. Pima County is devoted to ensuring residents, but did not feel that the federal agency and its affiliated divisions were acting in good intent of the enacting legislation, federal guidance, and FEMA's own policy decisions, like IB Nc followed each direction of the SAA and FEMA, regardless of the number of additional hurdles p Additionally, the County has reached out to our Congressional delegation for assistance, espec

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OIG Complaint: Narrative Responses

A. What did the person(s) do or fail to that was wrong? (max 5000 characters)

As was made clear in your office's November 2017 report, FEMA and CBP Oversight of Operation Stonegarden Program Needs Improvement, administration of Operation Stonegarden funds has been inconsistent, both fiscally and programmatically. State Administrative Agencies (SAA) apply for the funding then pass through the funds to local governments. The SAA then provides monitoring oversight of the subgrantees to assure that funds are used according to FEMA, U.S. Customs and Border Patrol and Federal Grant requirements. The enacting of 2 C.F.R. § 200 was intended to make grants administration more uniform both for the grantors and grantees.

It is clear that agencies are interpreting the guidance in multiple ways that often conflict with both the guidance and the U.S. Code that clarifies the use of Homeland Security funds. Two primary issues are at hand in this case: refusal to allow for use of OPSG dollars for humanitarian aid relief and refusal to allow indirect cost recoupment.

1. True border protection requires more than just law enforcement services. In recognition of this, FEMA Grants Program Directorate Information Bulletin (IB) No. 436, issued on November 27, 2018, expanded the allowability of humanitarian relief for unaccompanied minors and families with minors under OPSG. IB No. 436 required that proposed reallocations must be coordinated with the applicable USBP sector and approved by USBP and FEMA. In April 2019, Pima County experienced a dramatic increase in asylum seeking families. The County requested that our 2018 OPSG award be amended to include humanitarian aid. Despite having followed the process and garnering support from both the Integrated Planning Team and the SAA, FEMA has denied the ability to use 2018 Operation Stonegarden funds for Humanitarian Aid.

   It was determined that "Pima County's reallocation request to move operational funding to humanitarian aid does not establish an appropriate and prevalent border security risk for mitigation." This is despite that fact that the nongovernmental organizations were so overwhelmed with asylum seekers in April and May of 2019 the City of Tucson and Pima County had to stand up shelters to assist the NGOs as well as the Border Patrol. Most importantly though, the Border Patrol would have been required to divert their resources to house and transport these asylum seekers or release thousands to the streets of Tucson thereby detracting from their borders security functions. That alone would seem to be an "appropriate and prevalent border security risk for mitigation."

   Additionally it appears that the voluntary return of FY 2017 OPSG operational funds was used as a determining factor in this decision. As noted in the November 14, 2019 letter (Attachment A), "USBP's operation review weighed the previous voluntary return of over $1.2 million in FY17 operation funds [that] resulted in a loss of over 11,000 OPSG-funded overtime hours. A determination to convert additional FY18 OPSG operational funding for humanitarian relief contravenes border security operations as a USBP priority." Given the historical lack of transparency in how hours are tracked and accounted for, this assertion is spurious at best as OPSG overtime hours are by the very nature of the program mission-specific. This appears to be

direct retaliation for voluntarily returning grant funds. The 11,000 hours referenced were not guaranteed, they could only be an estimation at best.

2. It is our assertion that FEMA and the State of Arizona are meeting neither the spirit nor the letter of 2 C.F.R 200, 44 CFR § 13, and 6 U.S.C. § 609(b). The grant applications published by the SAA previously did not allow for request of indirect costs. While that has since been fixed, there is still inconsistent information coming from the SAA and more importantly, FEMA. Again, Pima County followed the procedures for requesting an amended award, including several rounds of follow-up questions from the Grants Directorate for FEMA. It was acknowledged the County was eligible for indirect cost reimbursement early in the process. However, the Federal and State Departments of Homeland Security determined we were ineligible to receive indirect costs at a negotiated de minimis amount, even though Pima County does not meet the threshold requiring a Negotiated Indirect Cost Rate Agreement (NICRA) and there is no indication that the County ever had one. During an Arizona Border Counties Coalition meeting, Pima County was assured indirect cost recovery would be allowable for this grant, but subsequently was advised in writing by the SAA that no indirect cost rate would be approved unless Pima County could produce a Negotiated Indirect Cost Rate Agreement with its federal cognizant agency. Later emails indicated that there may be a reversal of this policy and the granting of indirect expenses as a de minimis rate would occur on a "case-by-case basis."

B. What rule, regulation, or law do you believe to have been violated? (max 5000 characters)

Under 6 U.S.C. § 609(b), the limitations on use of funds does not include indirect costs. Announcements for this funding specifically acknowledge that indirect is an allowable expense. Failure to allow indirect expenses is thus contrary to the United States Code that makes this funding available. Additionally, it is contrary to the Code of Federal Regulations (2 C.F.R § 200.331(a)(4)) which requires that a pass-through entity accept a subrecipient's de minimis indirect cost rate if it meets the requirements of §200.414(f), which Pima County does.

While the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) standardized much of the federal administration of grants, it does provide for some variance across grants and funding agencies, as long as they are clearly delineated in the Notice of Funding Opportunity (NOFO). As stated in 2 C.F.R. § 200.414(c)(4),

"As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share approved under paragraph (e)(1) of this section."

The 2018 NOFO issued by DHS for the Fiscal Year (FY) 2018 Homeland Security Grant Program (HSGP) (NOFO DHS-18-GPD-067-00-01) notifies applicants that indirect costs are allowable under this program. However, it is slightly contradictory in its guidance. Under the instructions for submission, which appears to be a boiler plate for all non-disaster FEMA funding, it indicates

that a copy of the Indirect Cost Agreement be submitted with the application, or the applicant must negotiate a rate. In the grant specific application instructions, however, it specifically states, "[W]ith the exception of recipients who have never received a negotiated indirect cost rate as described in 2 C.F.R. § 200.414(f), recipients must have an approved indirect cost rate agreement with their cognizant federal agency to charge indirect costs to this award" (Attachment B, page 18).

It appears that the Arizona Department of Homeland Security (AZDOHS) is opting to interpret this as narrowly as possible. AZDOHS Policy attempts to draw a hard distinction between a federally approved cost rate negotiated with a cognizant agency and a de minimis rate, when a de minimis rate is in fact federally approved by 2 C.F.R. §200.414(f).

Another factor that AZDOHS is failing to address is that as a pass-through entity, it is subject to the requirements in 2 C.F.R. § 200.331(a)(4), which requires the pass-through entity to accept the subrecipient's federally negotiated indirect cost rate if one exists OR "a rate negotiated between the pass-through entity and the subrecipient...or a de minimis indirect cost rate."

C. Briefly summarize how you believe our office can assist you regarding your matter? (max 5000 characters)

Pima County believes the Office of the Inspector General can assist us with understanding and resolving the inconsistencies that we are experiencing with FEMA on humanitarian aid and indirect cost rates. These inconsistencies led our Board of Supervisors to reject the FY18 OPSG award. Pima County is devoted to ensuring public safety for our residents, but did not feel that the federal agency and its affiliated divisions were acting in good faith and honoring the intent of the enacting legislation, federal guidance, and FEMA's own policy decisions, like IB No. 436. Pima County has followed each direction of the SAA and FEMA, regardless of the number of additional hurdles placed in our path. Additionally, the County has reached out to our Congressional delegation for assistance, especially with understanding delays in response or complete lack of responsiveness from FEMA. Since there is no formal appeal process for grant decisions in this case, Pima County is respectfully requesting a review of the activities that have transpired and more oversight of the implementation of the programs.

Part V- Upload Documents (PDF only, 5 files max not to exceed 30 mbs total)

Attachment A: Letter from U.S. Dept of Homeland Security_November 14, 2019

Attachment B: FY 2018 NOFO

Attachment C: Timeline as submitted to Sen. Martha McSally's office, letter November 13, 2019 (see pages 2 and 3)

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Part IV - Other Actions

Please indicate in this section if you have filed your complaint with any other office, to include other Inspector General offices, and your Congre contacted other entities, clearly identify the agency, office, or command, and provide your understanding of the current status of your matter. If responses from those office(s), provide our office with a copy.

(*) Required Information

Have you reported this matter to any other organizations/agencies? * ○ Yes ◉ No

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Part V – Upload Documents

If you have supporting documentation that you wish to provide with this complaint form, please use the 'Add File' button below. Do not send cla this unclassified internet system. We recommend that you scan your documents together into one electronic file, not to exceed 30 MBs total.

- PDF files only
- You may upload up to 5 files and not to exceed 30 MBs total.

Browse for files

PIMA COUNTY OIG COMPLAINT ATTACHMENT A.pdf

PIMA COUNTY OIG COMPLAINT ATTACHMENT B.pdf

PIMA COUNTY OIG COMPLAINT ATTACHMENT C.pdf

2.06 Total MB.

Add File Remove File

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Part VI - Certifications

(*) Required Information

☑ * I certify that all of the statements made in this complaint are true, complete, and correct, to the best of my knowledge. I understand that a concealment of a material fact is a criminal offense (18 U.S.C. ~ 1001; Inspector General Act of 1978, As Amended, §7).

☑ * I have provided my election concerning my filing status in Part 1 of this form (Release of Identity, Non-Release of Identity, or Anonymous) elected anonymous status, it may impact the ability of the DHS OIG to either conduct an inquiry, if warranted, and/or to appropriately address r understand that if I have elected not to release my identity outside of DHS OIG, my complaint will not be disclosed outside DHS OIG for action determined necessary or required by law. My selection not to disclose my identify outside DHS OIG may also prevent further action from being

☑ * I further understand that even if I elect confidential status, my identity may be disclosed, if required by applicable legal authority, or if the I such disclosure is otherwise unavoidable.

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