




**FEMA**  
National Advisory Council

August 19, 2008

MEMORANDUM FOR: R. David Paulison  
Administrator

FROM: G. Kemble Bennett   
Chairman  
National Advisory Council

SUBJECT: Recommendations on the Stafford Act and Related Federal  
Regulations: Public Assistance and Individual Assistance Issues

In July 2008, the Federal Emergency Management Agency (FEMA) proposed that the National Advisory Council (NAC) provide initial conceptual input on potential regulatory reform that could simplify administration of select public and individual assistance programs. To this end, FEMA provided the NAC with specific issue areas and possible resolutions for substantive review and comment. FEMA expressed its desire to identify areas where regulatory change could be quickly enacted and to begin the Federal rulemaking process by the end of August 2008.

The National Advisory Council's Stafford Act Subcommittee has reviewed and provided input on three public assistance issues and four individual assistance issues which FEMA should consider as they further develop these issues and move forward with the Federal rulemaking process. During the August 13-14, 2008 meeting in Washington, DC, the full council approved providing the following input to FEMA.

As an initial comment, the NAC highly recommends that FEMA respect tribal sovereignty and the "government to government" relationship, especially as it relates to associated regulations and policies. In particular, appropriate references to States should also include Federally-recognized tribes.

### **Public Assistance Regulatory Issues**

#### **PA Issue #1 – Public Assistance Advance Funding Program**

FEMA Issue: Major disasters can severely impact the operating budgets and revenue streams of local governments.

FEMA Proposed Solution: Provide advance funding to local governments, through the States, so they can expedite the initiation of recovery projects and speed the recovery process.

Discussion: There was lengthy discussion on the need for FEMA to establish clear guidance on several issues, including:

- Cash management
- Interest accrual and accountability
- Scope of work issues – i.e. earthquake estimates/repairs may take longer to calculate than other types of hazards.
- Increased management costs for states and locals.
- Need clarification that the 25% advance is a rolling advance.

The States, as the PA grant managers, would likely request that FEMA establish a cut-off for advance funding so that grant funds can be reconciled prior to the entire award being distributed to the subgrantee. Committee members agreed that limiting advances to no more than 75 or 80 percent of the total award would allow that reconciliation to occur and limit the potential for overspending.

There was also a recommendation that FEMA explore the option of providing collateral or federal loan guaranty to local governments to allow them to more easily borrow funds for repair and reconstruction.

The NAC supports any efforts to speed the provision of recovery funds to communities following a disaster.

## **PA Issue #2 – Implement Key Public Assistance Reforms**

FEMA Issue: Public Assistance regulations do not reflect New FEMA’s post-Katrina business practices and philosophy changes regarding the provision of disaster assistance, nor do they address the post-Katrina legislative amendments to the Stafford Act.

FEMA Solution: Complete a comprehensive revision of Public Assistance regulations.

Discussion: This issue contained five separate initiatives:

1. Expediting payments to states for debris removal.
  - *Supported by the NAC without comment.*
2. Delineating authority to provide Public Assistance to newly recognized or required types of recipients of assistance.
  - *FEMA should clearly specify types of activities and address eligibility criteria and responsibility for debris removal at private or gated communities.*
3. Streamline and improve projects worksheets.
  - *Ensure policy is consistent with regulation.*
4. Institutionalize funding and applicant protection improvements.
  - *FEMA has advised that it will address cost overruns in separate regulatory action.*
5. Improve state administrative plans.
  - *Ensure policy is consistent with regulation.*

### **PA Issue #3 - Public Assistance Catastrophic Disaster Staffing – Force Account Reimbursement**

FEMA Issue: The response and initial recovery efforts of State and local government can overwhelm State and local government resources, especially during large-scale incidents where emergency work can continue for many weeks.

FEMA Solution: In large-scale events, for a limited period of time, reimburse State and local government for the regular or straight time salaries and benefits of an applicant’s permanently employed staff for the costs incurred in re-assigning this staff to engage full time on emergency protective measures and debris removal.

Discussion: There was significant discussion regarding this issue and several areas requiring clarification were identified, including:

- Eligibility for backfill costs in addition to straight and overtime.
- Clear guidance established to prevent supplanting of existing state and local budgets.
- Universal match was unclear and needs to be defined.
- Once the 30-day threshold has been met, is reimbursement retroactive?
- References to “catastrophic events” should be eliminated, as this varies by jurisdiction. The types of events that would be included should be clearly set out.

### **Individual Assistance Regulatory Issues**

#### **IA Issue #1- Simplify and Streamline Recertification of Assistance for Disaster Applicants**

This issue included three primary areas: eliminate the requirement for a permanent housing plan; replace “ability to pay” determination with a structured reduction of rental assistance; and replace recertification correspondence with face-to-face visits by recertification personnel.

FEMA Issue: FEMA’s current process for evaluating and verifying a continuing need for temporary housing assistance (a.k.a. “recertification”) is viewed by some as subjective and inconsistent. However, the current regulations at 206.114 on Criteria for Continued Assistance do not allow FEMA to make, via policy, the changes necessary to effectively remediate this issue.

FEMA Solution: Revise the regulations for Criteria for Continued Assistance to significantly streamline the recertification process by eliminating the requirement for a permanent housing plan and requiring that the recertification process be conducted by personal interaction/visits, rather than by correspondence. The new regulations will also replace imprecise “ability to pay” determinations with the implementation of a uniform but incremental rental assistance reduction.

Discussion: Overall, the NAC supports streamlining the process to make it easier for applicants to access assistance. Specific comments and concerns include:

- There was support for the elimination of the permanent housing plan, but FEMA should ensure that the face-to-face visits address a permanent housing solution.

- Clearly identify an appeals process that takes into account the entire range of issues that may be faced by a disaster victim.
- Clarify the “ability to pay” determination; after discussion with FEMA, the NAC’s understanding is that the personal visits will clarify household income and the ability to pay. Based on those two factors, there may be an incremental reduction in rental assistance.
- Disaster victims who have relocated outside the disaster event area must be provided the same level of service as those in the event areas, specifically face-to-face visits and the right of appeal.
- The NAC noted that, in some cases, the permanent process may suffice and a face-to-face visit may not be necessary. FEMA should consider the use of alternative methods of contact when appropriate.

## **IA Issue #2 – Individual Assistance Rental Repair Pilot**

FEMA Issue: The legislative criteria underpinning the Individual Assistance Rental Repair Pilot limit operational/field opportunities and make implementation problematic for FEMA.

FEMA Solution: Develop regulatory guidance requiring that FEMA mission-assign responsibility for Pilot execution and implementation to the Department of Housing and Urban Development (HUD).

Discussion: The Post Katrina Emergency Management Reform Act includes authority for FEMA to conduct an IA pilot program to refurbish privately-owned multi-family rental units for disaster victims. FEMA intends to implement the pilot and is looking for feedback. The NAC offers the following comments regarding implementation for FEMA’s consideration:

- HUD should be the federal entity that oversees the repair and enhancement of rental units, which when not affected by the event would be used to provide temporary housing for those displaced by the event.
- FEMA should consider including specific timelines and deliverables in their guidelines (specifically funding) to HUD.
- HUD should evaluate their policies and procedures to expedite the process of providing disaster housing.
- FEMA and HUD should explore ways to maximize the use of units restored under this pilot program for future disasters.
- FEMA will retain the mission to fund locals or states, or on its own to provide post disaster temporary housing to those in need from the event.
- As to local building requirements: FEMA or HUD may add a qualification that if a local or state jurisdiction wants assistance in this vein from HUD then the local must make whatever accommodations regarding building codes that are needed in order to move expeditiously and safely ahead with the HUD program.
- Improve the continued use of Section 8 housing vouchers for disaster victims. Work with locals to improve and increase Section 8 capacity, possibly by increasing access to Section 8 during declared events. HUD should simplify the landlord application process

and expedite payments to landlords (as the current process is too slow). Also, HUD must address the issue of brokers' fees and location/identification of Section 8 properties.

- The NAC encourages FEMA and HUD to develop processes that ensure all properties included in the pilot project adhere to applicable civil rights and disability access regulations.
- The NAC requests that FEMA provide them with a copy of the Congressionally mandated pilot project progress report currently due in March 2009.
- The NAC encourages FEMA and HUD to develop a mechanism for participants in the program to ensure they have purchased appropriate insurance, maintained the property, and participate fully during future Federal emergency housing situations. The NAC also recommends that FEMA and HUD consider placing a lien on the properties commensurate with the repair dollars to ensure accountability for the above activities.

### **IA Issue #3 – Individual Assistance Program Lessons Learned**

**FEMA Issue:** The individual assistance program regulations contain ambiguous and outdated provisions. This leads to difficulties in administering the individual assistance programs in a consistent, clear and understandable manner.

**FEMA Solution:** FEMA is drafting regulatory language based on lessons learned to address any ambiguous and outdated provisions so they are clear and consistent, and do not impede effective delivery of disaster assistance to applicants.

#### **Discussion:**

- **Semi-Permanent housing** – The NAC recommends that the NAC Post-Disaster Housing Subcommittee address this as a part of their recommendations regarding the National Disaster Housing Strategy.
- **Caps** – FEMA should identify an administrative way for homeowners to waive the rental assistance cap so that the homeowner can access their full Individual and Household Program (IHP) grant award.
- **Utility Payments (part of IHP Cap)** – The NAC recommends that FEMA extend eligibility for utility payments to internet and cable service providers. In 2009, with advent of digital television, cable or converters will be required to access television. In addition, FEMA actively encourages internet/online applications and online access speeds the recovery process by allowing disaster victims to more readily search for jobs, housing opportunities and access social services.
- **Case management services** – ensure the services provided under the disaster programs are appropriate for FEMA and support local surge capacity. The rapid and expedient provision of these services, post-disaster, is critical to successful recovery. These services should be provided and funded regardless of who provides the service when there is a clear disaster related need.

## **IA Issue #4 – Transportation assistance to individuals and households**

FEMA Issue: The movement of individuals and households displaced by a disaster was a critical issue during Hurricanes Katrina and Rita. Numerous disaster victims were evacuated significant distances from their homes, and FEMA did not have existing policies and procedures for assisting in their return to their communities.

FEMA Solution: FEMA will draft the regulations necessary to implement the provision of transportation assistance.

Discussion: In general, the NAC supports the need to return disaster victims to their home when transported by FEMA to areas significantly distant from their pre-disaster primary residence. However, there was no firm consensus on how to proceed.

The NAC is concerned that this regulatory change will create the appearance of rewarding poor public policy, leadership, and a lack of personal responsibility. The NAC is also concerned that providing transportation for evacuees back to their pre-disaster home of record sets precedence for assistance that may be difficult for FEMA to effectively manage. It is critical that FEMA develop very clear guidance that establishes the conditions under which this assistance is provided.

Clear guidance is needed on several key points, including:

- FEMA must have the authority and the responsibility to return disaster victims to their pre-disaster location if FEMA initiated the transportation. Examples include the mass evacuation of New Orleans residents post-Hurricane Katrina or transportation efforts initiated by a FEMA mission assignment.
- The NAC recognized the importance and value of citizens who take responsibility for their own safety by choosing to heed the warnings of their state and local officials. To that end, the NAC strongly encourages FEMA to consider similar types of assistance to those who have taken the appropriate action and have self-relocated by complying with local or state recommended evacuation directives.
- Consider adding transportation as an allowable IA expense, or built within the IA cap and determined on a case by case basis.