



December 18, 2008

MEMORANDUM FOR: R. David Paulison
Administrator

FROM: G. Kemble Bennett *G. K. Bennett*
Chairman
National Advisory Council

SUBJECT: Recommendations on the Stafford Act and Related Federal
Policies: 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 and associated policies that could simplify administration of select public and individual assistance programs. At that time, FEMA provided the NAC with specific issue areas and possible resolutions for substantive review and possible recommendations. The NAC reviewed three public assistance (PA) and four individual assistance (IA) regulatory issues and provided guidance to the Administrator on August 19, 2008. FEMA has begun the rulemaking process.

FEMA also seeks input on corresponding PA and IA policies, some of which supplement regulation. FEMA has asked the NAC to review those policies with regard to agreement of the issues and proposed solutions, and to provide additional suggestions, input and justification behind potential policy changes.

The National Advisory Council's Stafford Act Subcommittee has reviewed and provided input on six PA policy issues and four IA policy issues which FEMA should consider as they move forward with issuing new, revised or final policies. During the December 10-11, 2008 NAC meeting in Dallas, Texas, the full council approved providing the following input to FEMA.

Policy Issues

1. Force Account (Regular Time) Reimbursement for Permanent Employees (Public Assistance)

Issue: Government personnel are pulled from their regular duties and assigned full-time to emergency and disaster-related activities. In catastrophic events, local governments may suffer severe disruption in revenue, making it difficult to sustain operations. Reimbursement for permanent employees engaged in emergency protective measures after a disaster is limited to their overtime, whereas permanent repair work applicants may be reimbursed for regular or straight-time salaries. This policy would be issued if FEMA develops a regulation that would change 44 CFR 206.228(a)(4).

Proposed Solution: This policy may accompany a potential regulatory initiative to provide reimbursement in catastrophic incidents and, for a limited period of time, to State and local governments for the regular or straight-time salaries and benefits of an applicant’s permanently employed staff for the costs incurred in assigning permanent staff to engage full time on emergency protective measures and debris removal.

Discussion: The NAC reviewed a counterpart regulatory issue in August 2008: PA Issue # 3, “Public Assistance Catastrophic Disaster Staffing – Force Account Reimbursement.” At that time, the NAC engaged in significant discussion on the issue and requested clarification on several areas. While the need for clarification still exists, in bullets 1, 4 and 5, the NAC is recommending specific actions.

1. Backfill costs for temporary as well as permanent force account personnel should be eligible in addition to straight and overtime.
2. Clear guidance should be established to prevent supplanting of existing state and local budgets.
3. Universal match was unclear and needs to be defined. Encourage FEMA to develop consistent policies on universal match programs.
4. Once the 30-day threshold has been met, reimbursement shall be retroactive.
5. References to “catastrophic events” should be eliminated, as this varies by jurisdiction.

2. Consistent Individual Assistance Recertification Policy for Direct Housing and Financial Assistance

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. This policy would be issued if FEMA develops a regulation that would change 44 CFR 206.114.

Proposed Solution: This policy may accompany a potential regulatory initiative to revise the Criteria for Continued Assistance to significantly streamline the recertification process. If regulatory changes are made, FEMA would review and re-issue policies on housing assistance.

Discussion: In August 2008, The NAC reviewed a corresponding IA issue: IA # 1, “Simplify and Streamline Recertification of Assistance for Disaster Applicants.” At that time, the NAC supported streamlining the process to make it easier for applicants to access assistance. To reiterate, specific comments and concerns included:

- 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.

In August, 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.

3. Temporary Facilities (Public Assistance)

Issue: Temporary relocation of public and private nonprofit (PNP) facilities that provide essential community services may be necessary when the facility is damaged to the extent that it cannot continue to provide essential services unless it is temporarily relocated to another facility. The current policy is Response and Recovery Directorate Policy 9523.3, *Provision of Temporary Relocation Facilities*, July 16, 1998. FEMA has developed and is reviewing a draft revised policy.

Proposed Solution: This policy would provide guidance for determining the eligibility and duration of FEMA assistance for the temporary relocation of essential public and private nonprofit facilities.

Discussion:

- **Recommendation:** Simplifying process for jurisdictions that have COOP in place. Under the revised guidelines, if a jurisdiction activates Continuity of Operations Plans, FEMA will automatically consider their facilities, as related to their essential services, as eligible for temporary relocation.
Justification: “Criticality and safety of facility” are factors used to determine the need for relocation by FEMA as well as by Continuity of Operations Plans. FEMA policy allows for the provision of temporary facilities for essential services when “related to saving lives and protecting and preserving public health and safety”; COOP uses the identification of essential services to do just that and further builds out plans in order to ensure operations can resume within the required time objective. Therefore, FEMA should consider COOP activations as automatically eligible for relocation under the guidelines.
- Encourage consistent policy; if extending temporary facilities for 12 months, then also extend storage for 12 months.
- **Recommendation:** Facilities or centers serving seniors and others, funded under Title III of the Older Americans Act, should be considered essential as they provide meals. Additionally, FEMA should clarify whether child care centers are considered essential critical facilities; there was question if they fell under “custodial” or “educational” in nature.

4. Consolidation of Facilities at Actual Cost (Public Assistance)

Issue: Post-disaster issues related to decreased population, unknown re-population rates, obsolete facilities, under-utilized facilities, poorly maintained facilities, reduced requirements for

public services, and/or funding concerns may complicate recovery strategies. This would be a new policy and is under development.

Proposed Solution: This policy, stemming from Gulf Coast educational facilities, would reduce alternate project penalties for consolidated facilities.

Discussion: The NAC agrees that FEMA should be allowed to consider a group of facilities that provide a common government function/service such as, but not limited to, providing educational services, to be a part of an aggregated function. This would allow for multiple facilities to be combined given they provide a similar service.

5. Consolidation of Contents of Eligible Public Facilities (Public Assistance)

Issue: FEMA's current policy limits funding for the replacement of damaged equipment, vehicles, and supplies to the same number of items of approximately the same age, capacity, and condition. Following a major disaster, applicants may determine that replacing damaged or destroyed equipment, vehicles or supplies with the exact number and capacity of the destroyed equipment, vehicles and supplies is not cost-effective or in the public interest. Current guidance is contained in the *Public Assistance Policy Digest* (FEMA 321, January 2008) and the *Public Assistance Guide* (FEMA 322, June 2007). This would be a new policy and is under development.

Proposed Solution: This policy would allow contents (e.g. equipment, supplies, and furnishings) to be replaced based on total cost, rather than one-for-one replacement. For example, if an applicant had 10 destroyed chairs, they could instead use the FEMA reimbursement amount to purchase five chairs and a desk if that was what they really needed.

Discussion: The NAC agrees with this policy initiative. The cost to replace equipment, vehicles, and supplies that are destroyed by a major disaster should continue to be eligible for reimbursement, and applicants should not be required to replace destroyed equipment, vehicles, and supplies with the same number of items of the same age, condition, and capacity that existed at the time of the disaster. Applicants should be able to purchase fewer new items for the same purpose with different capacities as long as the cost does not exceed the estimated amount of pre-disaster inventory. (Funding still based on blue-book value of items, the value of the destroyed item.)

6. 406 Hazard Mitigation (Public Assistance)

Issue: To ensure that communities affected by major disasters are rebuilt stronger, safer and less vulnerable to damage from future flooding disasters, FEMA should fund Public Assistance projects that allow communities to adhere to the elevation standards established by Advisory Base Flood Elevations (ABFEs). The current policy is *Hazard Mitigation Funding Under Section 406 (Stafford Act)* (DAP 9526.1), July 30, 2007. FEMA is developing a revised policy.

Proposed Solution: This policy document would allow for FEMA Public Assistance reimbursement for elevation or replacement costs of eligible public and private nonprofit facilities to ABFEs, when applicable.

Discussion: The NAC agrees with this policy initiative.

7. Sharing Federal Commodities with States Prior to Declaration

Issue: States may have a need for commodities in response to the pending impact of an incident that has not yet been declared a major disaster or emergency. The Federal government may have pre-positioned commodities, supplies or equipment that may meet the need of the State, but is restricted when providing such Federal assistance prior to a declaration. This would be a new policy and is under development.

Proposed Solution: This policy would provide guidance on the sharing of Federal commodities with States prior to the declaration of a disaster. In such instances, the State would agree to reimburse FEMA the cost of the commodities if a Presidential declaration is not made as a result of the incident. Such arrangements have been done on a case by case basis, when States have benefitted from the use of Federally-owned and pre-positioned commodities in proximity to the incident. The policy would establish consistent guidelines for the sharing of commodities in such instances.

Discussion:

- Issue needs more definition. Recommend that FEMA provide additional definition or clarification. The NAC can only provide general feedback without greater definition at this time.
- During discussion, these issues were identified by members:
 - Concern about option for State to return unused and sealed shipments back to Federal government (CDC guidelines on prepositioned materials – not charged for materials until State cracks the seal.)
 - What framework should be used? Preexisting MOU's or agreements? Concern about competition between states; overestimation of need; ensuring requests meet actual need; using regional planning to ensure needs match requests.

8. Critical Needs Assistance for Displaced Individuals and Households (Individual Assistance)

Issue: After a large scale major disaster, those affected by the disaster may not be able to return to their residences for an extended period of time. During Hurricane Katrina, FEMA issued “expedited assistance” in the form of \$2,000 debit cards in order to help evacuees meet critical and immediate needs while they were displaced from their homes. Based upon this experience and lessons learned, FEMA revised its approach to meeting critical needs of displaced individuals. The new policy, *Critical Needs Assistance for Displaced Individuals and Households* (DAP 9462.1), was issued on September 2, 2008. FEMA seeks suggestions on ways to further improve this policy.

Proposed Solution: FEMA issued an Interim Policy on September 2, 2008, to provide eligibility criteria for awarding a limited amount of financial assistance to eligible individuals and households who, as a result of a declared a major disaster, are displaced from their primary residences. FEMA will review the Interim Policy based upon recent experience and consider making any necessary changes or improvement prior to issuing the policy as final.

Discussion:

- **Recommendation:** Increase base amount to \$1,000, adjustable to a maximum of \$2,000 based on number in household.

Justification: A household will potentially need more money to meet immediate critical needs, especially if their needs include purchasing medication and medical care. The \$500 cap disadvantages larger households, which need to buy more with less money. Since payments under Critical Needs Assistance are applied toward the maximum amount of IHP assistance, this is not an issue of how much money a family receives but when they receive it. A family will still have to show the need for the money and be subject to repayment if the funds are misused.

- How will these funds be disbursed?
- How to ensure funds not misused?
- **Recommendation:** Encourage FEMA to work with US Red Cross to ensure immediate needs (0 to 7 days) are being addressed.
- **Recommendation:** Adjust the definition of household (linked to separate households issue)

Justification: The definition of household – all persons who lived in the pre-disaster residence who request assistance – is too limiting. The definition does not recognize the realities of diverse households that may not share familial relationships (e.g. apartment roommates) and the effects of a disaster on shaping the post-disaster residence. A disaster event can break families apart due to stress and hardship or create the need for a household to split apart geographically to work, find shelter or other reasons. The definition also does not recognize that a household may not be maintained post-disaster due to changed housing options and income. FEMA’s aid model unfairly keeps individuals connected to households they may no longer want to be part of and tied to a head of household that may not have their best interests in mind. Individuals should have the ability to become their own head of household if they can demonstrate a change in their household, and show that their aid will go toward a distinct need that is not already being met through other relief funding. FEMA may want to consider a “head of household” standard similar to the tax code.

9. Transitional Sheltering Assistance for Displaced Individuals and Households

Issue: After a major disaster, residents of an impacted area may not be able to return to their home for an extended period of time because their community is inaccessible or uninhabitable due to disaster-related damages. Congregate shelters may not provide the best environment to provide sheltering for those who are displaced from their community for an extended period of time. After Hurricane Katrina, FEMA provided hotel/motel rooms for evacuees who could not return home. Based upon this experience and lessons learned, FEMA revised the policies and procedures for provision of transitional sheltering assistance to evacuees using hotel/motel

lodging. The new policy, *Transitional Sheltering Assistance for Displaced Individuals and Households* (DAP 9443.2), was issued on September 22, 2008. FEMA seeks suggestions on ways to further improve this policy.

Proposed Solution: FEMA issued an Interim Policy on September 22, 2008, to provide eligibility criteria for transitional sheltering in support of a Presidential declaration of a major disaster involving a mass evacuation and an anticipated long term displacement, where Section 403 and Section 502, Category B, Emergency Protective Measures, and Section 408, Federal Assistance to Individuals and Households, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, are included. Transitional Sheltering Assistance (TSA) is intended to provide short-term lodging to those evacuees from identified areas who can not return their homes for an extended period of time, i.e., 14 days, because their community is either uninhabitable or inaccessible due to disaster-related damages. These geographical segments of the disaster area will be identified jointly by the State and FEMA. FEMA will review the Interim Policy based upon recent experience and consider making any necessary changes or improvement prior to issuing the policy as final.

Discussion: The NAC agrees with this policy.

10. Payment of the Cost of Utilities – Individual Assistance

Issue: The Post-Katrina Emergency Management Reform Act amended the statutory authority for IHP to allow FEMA to provide utility assistance to eligible applicants, predicated on the applicant receiving financial assistance to rent an alternate housing resource. This policy can only be issued if FEMA develops a regulation that would change 44 CFR 206.117(b).

Proposed Solution: To implement this new authority, FEMA would be required to publish a change to its regulations. This policy would accompany any such regulation and would provide guidance on how FEMA would provide eligible applicants with assistance for the cost of utilities as part of financial assistance to rent an alternate housing resource.

Discussion:

- The NAC agrees with this policy initiative.
- The NAC provided guidance on corresponding regulatory initiative in August 2008: IA Issue #3, “Individual Assistance Program Lessons Learned”.
- Specifically, as a part of utility payments under the IHP Cap, the NAC recommended that FEMA extend eligibility for utility payments to internet (whether provided via dial-up, DSL or cable) and cable service providers. In 2009, with advent of digital television, cable or converters will be required to access television. Any technology required to assist the hearing and sight impaired, such as Deaflink (an internet based system), should be included.
- 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.