Overview of FEMA and Disaster Relief Funding

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Stafford Disaster Relief & Emergency Assistance Act (P.L. § 93-288)

What is it, why does it matter, who is in charge

Stafford Act Emergency Declaration of Assistance triggers the majority of federal financial disaster assistance

- The Governor must request and President may declare a major disaster in a state[1]
- Once declaration is made, a state becomes eligible for unlimited funding tied to storm damage (of at least 75%) subject to the availability of Congressionally appropriated monies in the Federal Disaster Relief Fund
- Emergency federal funding flows through the state on a reimbursable basis

Key considerations:

Bottom-up approach	• Disaster response is a “bottom-up” approach. FEMA supplements, but generally does not supplant, efforts and available resources of state and local governments • Given this “bottom up” approach, except in the most extraordinary circumstances, local and state governments are expected to lead the disaster response and recovery effort
Key officials	• *Key Federal Official:* Federal Coordinating Officer (FCO). The FCO generally coordinates federal efforts across agencies • *Key State Officials:* Governor’s Authorized Representative (GAR) and State Coordinating Officer (SCO). The GAR is responsible for managing all FEMA funding, including funding to, and oversight of, all sub-grantees; the SCO has an operational focus
Eligibility criteria	• Once the disaster declaration is made, all Government entities, public corporations, municipalities, and certain private not-for-profits (like hospitals and universities) are eligible for FEMA funding in the declared area for whichever programs are activated by the President
Governance	• Grants governed by FEMA Regulations as well as the OMB “Super Circular” (2 C.F.R. § 200)[2] • Recipients must strictly follow all federal grant rules and procedures including those on procurement
Deobligation risk	• Although funding is on a reimbursement basis, there is risk of funding deobligations (returns) for ineligible spending or non-compliance with federal requirements, like procurement or documentation • Since 2009, the DHS OIG recommended deobligating as much as 33% of the funds it audited[3]

[1] Puerto Rico is considered a State under the Stafford Act, see 44 CFR §206.2(a)(22), although it is likely that numerous governmental entities, assuming they are properly constituted, are already eligible as local governments. See §206.2(a)(16).

[2] https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf

[3] https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-13-D-Dec16.pdf

Key FEMA Disaster Response Programs

Under the Stafford Act, FEMA provides assistance primarily through two main programs[1]

Public assistance (PA)	Individual assistance (IA)
• Provides grants to state, local governments, and certain private nonprofit organizations to provide emergency protective services, conduct debris removal operations, and repair or replace damaged public infrastructure • Grants provided on a reimbursement basis pursuant to specific Project Worksheets • *Not less than* 75% costs covered by the federal government -- state must cover the balance • Different eligibility categories and reimbursement rates	• Provides direct aid to affected individual households • Can take the form of housing assistance, other needs assistance, crisis counseling, case management services, legal services and disaster unemployment assistance • Total assistance under this program is capped at $33,300 per household, though that amount is adjusted annually • Housing programs are 100% federally funded and administered by FEMA, not by the state • There is no upfront out-of-pocket or reimbursement match due from state

[1] https://fas.org/sgp/crs/homesec/R41981.pdf

FEMA Emergency Work & Permanent Work Eligibility

There are many different categories under FEMA's Public Assistance Program

Key considerations:

- These programs become available to state and local governments upon being activated individually by the President
- At FEMA's request, the President can increase the Federal share of reimbursement
- Funding is governed by pre-negotiated / approved individual Project Worksheets

Category	Description	Federal Funding[2]
A	Debris removal	100% (Currently for 180 days in Puerto Rico)
B	Emergency protective measures[1]	100% (Currently for 180 days for Puerto Rico)
C	Roads and bridges	75%
D	Water control facilities	75%
E	Buildings and equipment	75%
F	Utilities	75%
G	Parks, recreational, other	75%

Texas is currently at 90% for all of these categories.[3] Florida is at 75%.

Categories C through G have not yet been authorized by the President for Puerto Rico.

[1] Emergency protective measures covers meals, medical care, emergency repairs, animal carcass disposal, mosquito abatement, mold remediation, among other things.

[2] https://fas.org/sgp/crs/homesec/R41981.pdf
[3] https://www.fema.gov/news-release/2017/09/15/president-donald-j-trump-amends-state-texas-disaster-declaration

Key FEMA related disaster assistance funding sources

Several near-term liquidity sources are often sought after disasters

Public assistance program federal share	• While Category A (debris removal) and Category B (emergency protective measures) were increased to 100% reimbursable funds by FEMA for 180 days, Categories C – G have not yet been activated • President has the authority to authorize and increase reimbursement for all categories from 75% to 100%, which is especially important for permanent repairs and replacement of damaged facilities • 90% is not uncommon -- 100% is very rare due to cost control concerns
Immediate needs advance (“INA”) funding	• Expedites FEMA recovery dollars for Public Assistance the government expects to ultimately recover • If requested, as much as 50% of eventual funding can be transmitted in advance of actual expenditure • Funding is based on Preliminary Damage Assessments and Individual Project Worksheets
Commercial insurance advances	• Commercial insurance recoveries is an essential short-term funding source • States typically compile lists of all government facilities with commercial insurance, conduct analysis to understand commercial insurance coverage for damage, and institute action plans for cash advances
Recent legislation	• Recent legislation enacted by Congress provides up to $150 million to fund the cost of lending a territory the portion of assistance for which the territory is responsible under the cost-sharing provisions of a major disaster declaration for Hurricanes Irma or Maria[1]
Community disaster loans	• Used to replace lost/displaced government revenues • $5mm cap on each loan -- only available for local governments • Normally, the state must provide a guarantee or the local government must provide collateral • Recent legislation enacted by Congress changed the terms and conditions of CDLs for territories[2]

[1] https://www.congress.gov/bill/115th-congress/house-bill/4008/text
[2] https://fas.org/sgp/crs/homesec/R42527.pdf

Community Disaster Loans (Section 417 of 42 U.S.C. §5184)

Community Disaster Loans are a flexible funding source to fill in revenue gaps

Congress recently approved $4.9bn in CDLs, but with several key differences[1]

- Territories are considered local governments for purposes of CDL
- The $5 mm CDL loan cap for territories was lifted (for 180 days) and permissible uses of loans was expanded based on the projected loss of tax and other revenues and on projected cash outlays not previously budgeted
- Terms, conditions, eligible uses, timing and amount of the loans, any collateral provisions, as well as the cancellation provisions were delegated to the Secretary of Homeland Security in consultation with the Secretary of Treasury
- There might be implications because of PROMESA as well as territorial legal requirements

CDL uses, terms and provisions:

Uses of proceeds:

- Replacement of lost/displaced government revenues
- Only FEMA program available for general government operations support

Guaranty/collateral: State must either guarantee loan or pledge collateral satisfactory to FEMA

Terms: Normal term of a CDL is five years, but often extended to 10 years (44 C.F.R. §206.367(c)). Interest rate is typically tied to 5-year Treasuries (44 C.F.R. §206.361(c)). Principal and accrued interest are both due at CDL's maturity.

Cancellation provisions:

- The existing statute is very clear there is a mandatory duty to cancel a CDL once minimum requirements are met
- Through 2012, FEMA had forgiven approximately $896m of the $1,326 mm in principal advanced to local governments since the CDL program's inception[2]

[1] https://www.congress.gov/bill/115th-congress/house-bill/4008. On Monday, October 23, 2017, the U.S. Senate approved a motion to limit debate on H.R. 2266, the Disaster Relief Supplemental Appropriations Act, which was recently approved by the U.S. House. The 79 to 16 procedural vote paved the way for Senate approval of the bill.
[2] https://fas.org/sgp/crs/homesec/R42527.pdf

Other key federal disaster response programs

FEMA is just one of several sources for federal disaster response funding

Unlike FEMA programs, many of these programs may require specific negotiated requirements with federal agencies and congressional appropriators

Dept. of Housing and Urban Development (HUD) Community Development Block Grant Disaster Response (CDBG-DR)

- These funds can be used to meet a wide range of disaster needs, but the program typically requires a supplemental appropriation to accommodate the high cost of disaster relief
- Must be used for unmet needs that primarily benefit low and very low income areas

U.S. Department of Transportation Federal-Aid Highway Emergency Relief (ER)

- Major source of grant funds for the repair and reconstruction of roads on the federal-aid highway system that have suffered serious damage as a result of either:
  - Natural disaster over a wide area
  - Catastrophic failure from any external cause

U.S. Army Corps of Engineers (Corps) Emergency Assistance

- Provides assistance to repair damaged flood control works (e.g., levees) and federally constructed hurricane or shore protection projects
- Authority to perform flood-fighting and disaster assistance focused on actions to save lives and protect improved property

U.S. Department of Agriculture (USDA) Agriculture and Rural Assistance

- There are multiple programs provided by USDA that provide food, housing and financial assistance, primarily to agricultural and rural communities

Small Business Administration (SBA) Disaster Loans

- Federally subsidized loans to repair or replace homes, personal property, or businesses that sustained damages not covered by insurance following a disaster
- Key source of assistance for the private sector and homeowners
- Applying for SBA loans makes borrowers ineligible for CDBG funds

[1] https://www.puertoricoreport.com/wp-content/uploads/2017/10/Congressional-Delegation-Ask.pdf

Deobligation decoded

The what, why, when, and how of deobligations

What is it?	• Although funding is on a reimbursement basis, there is risk of funding deobligation (return) for ineligible spending or non-compliance with federal requirements, like procurement or documentation
How are funds deobligated?	• The Office of the Inspector General ("OIG") of the Department of Homeland Security performs an audit of FEMA grant awards. Audits are performed on a sample basis, however, if partial costs are unsupported or ineligible per the grant requirements, the full project or contract may be disallowed • Audits may be performed on the Recipient or at a Subrecipient level and each applicant must submit all required FEMA grant documentation which is then reviewed by the OIG. OIG reviews contractors to determine if they have been debarred from prior fraud, waste or abuse • FEMA can also deobligate funds on its own (e.g., when a Project Worksheet is less than the estimate or an obligated project is cancelled or ineligible)
Why do deobligations occur?	• Some of the most common OIG audit findings include poor contracting practices, unsupported costs, poor project accounting, duplication of benefits/application of insurance proceeds, excessive equipment charges, and excessive labor & benefit charges • FEMA requires applicants to follow specific grant and federal requirements associated with grant funding. Good documentation facilitates the project formulation, validation, approval, and funding processes. Public Assistance Program and Policy Guide[1]
Who is at risk of deobligation?	• Following audits, the DHS OIG will recommend to FEMA that deobligations be made. Deobligations of funds are made to the Recipient (states, territories) • Recipients are liable for deobligations to both Recipients and Subrecipients
How often does it happen?	• Since 2009, the DHS OIG recommended deobligating as much as 33% of the funds it audited[2]

[1] FP 104-009-2 / April 2017

[2] https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-13-D-Dec16.pdf

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