



DISASTER DECLARATION PROCESS AND FEDERAL DISASTER ASSISTANCE

State, local, tribal and territorial governments share the responsibility for protecting their citizens from disasters, and for helping them to recover when a disaster strikes. In some cases, a disaster is beyond the capabilities of the state, local, tribal and territorial governments to respond.

In 1988, the Robert T. Stafford *Disaster Relief and Emergency Assistance Act*, 42 U.S.C. §§ 5121-5207, was enacted to support state, territory, tribal, and local governments and their citizens when disasters overwhelm them. This law, as amended, establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal Government, and sets the conditions for obtaining that assistance. The Federal Emergency Management Agency (FEMA), part of the Department of Homeland Security, is tasked with coordinating the response.

This paper explains the declaration process and provides an overview of the assistance available.

— THE DISASTER DECLARATION PROCESS —

The Stafford Act (§401) requires: “All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State or Tribal Chief Executive.” A state also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance under the Compact of Free Association.

The Governor’s request is made through the FEMA Regional Office. Federal, state, local, tribal and territorial officials conduct a joint Preliminary Damage Assessment (PDA) to estimate the extent of the disaster and its impact on individuals and public facilities. The PDA team is comprised of personnel from FEMA, the state’s emergency management agency, territorial, tribal, county, and local government officials and the U.S. Small Business Administration. The team’s work begins with reviewing the types of damage or emergency costs incurred by the units of government, and the impact to critical facilities, such as public utilities, individuals’ homes and businesses. This assessment includes the number damaged, the number of people displaced, and the threat to health and safety caused by the storm event. Additional data from other local voluntary agencies may also be reviewed. During the assessment, the team will collect estimates of the expenses and damages. This information is included in the Governor’s request to show that the disaster is of such severity and magnitude that effective response is beyond the combined capabilities of the state, local, tribal and territorial governments and that Federal disaster assistance is necessary. Normally, the PDA is completed prior to the submission of the Governor’s request. However, per 44 Code of Federal Regulations §§ 206.33(d) and 206.36(d), the requirement for a joint PDA may be waived for those incidents of such unusual severity and magnitude that formal field damage assessments are not required to establish the need for supplemental federal assistance under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act). When a severe or catastrophic event occurs, the Governor’s request may be submitted prior to the PDA. The Governor must still make the request.

As part of the request and a prerequisite to assistance under the Stafford Act, the Governor must take appropriate action under state law and direct execution of the state's emergency plan. The Governor shall furnish information on the nature and amount of state and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the Governor will need to certify that, for the current disaster, state and local government obligations and expenditures (of which state commitments must be a significant proportion) will comply with all applicable cost-sharing requirements.

Federal disaster law restricts the use of arithmetic formulas or other objective standards as the sole basis for determining the need for federal supplemental aid. As a result, FEMA assesses a number of factors to determine the severity, magnitude, and impact of a disaster event. Primary factors considered include:

- Amount and type of damage (number of homes destroyed or with major damage);
- Impact on the infrastructure of the affected areas or critical facilities;
- Imminent threats to public health and safety;
- Impacts to essential government services and functions;
- Unique capability of Federal government;
- Dispersion or concentration of damage;
- Level of insurance coverage in place for homeowners and public facilities;
- Assistance available from other sources (Federal, state, local, voluntary organizations);
- State and local resource commitments from previous, undeclared events; and
- Frequency of disaster events over recent period of time.

Based on the Governor's request, the President may declare that a major disaster or emergency exists, thus activating an array of Federal programs to assist in the response and recovery effort.

— FEDERAL DISASTER ASSISTANCE —

Not all programs, however, are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment and any subsequent information that may be discovered.

FEMA disaster assistance falls into three general categories:

- **Individual Assistance** — aid to individuals and households;
- **Public Assistance** — aid to public (and certain private non-profit) entities for certain emergency services and the repair or replacement of disaster-damaged facilities;

- **Hazard Mitigation Assistance** — funding for measures designed to reduce future losses to public and private property.

Some declarations will provide only individual assistance or only public assistance. Hazard mitigation opportunities are assessed in most situations.

A summary of each of these programs follows. Because program complexities require lengthy explanations, the discussion that follows is simply an overview.

INDIVIDUAL ASSISTANCE

Individuals and Households Program

The Individuals and Households Program (IHP) is a combined FEMA and state program. The IHP provides up to \$34,900 (FY 2019) for financial help or direct services to those who have necessary expenses and serious needs if they are unable to meet the needs through other means. When a disaster occurs, this program provides grant money and services to people in the declared area whose property has been damaged or destroyed and whose losses are underinsured or not covered by insurance. In every case, the disaster survivor must register for assistance and establish eligibility. The toll-free telephone registration number is 1-800-621-FEMA (3362). Individuals who have a speech disability or hearing loss and use TTY should call 1-800-462- 7585 directly; those who use 711 or Video Relay Service (VRS) should call 1-800-621-3362. Applicants may also register online at www.disasterassistance.gov. FEMA (or the providing agency) will verify eligibility and need before assistance is offered.

What Types of Assistance Are Provided?

The IHP has two provisions: Housing Assistance and Other Needs Assistance. The IHP - Housing Assistance (HA) (including Temporary Housing, Repair, Replacement, and Semi-Permanent or Permanent Housing Construction) assures that people whose homes are damaged by a disaster have a safe place to live. The IHP - Other Needs Assistance (ONA) (including personal property and other items) provides financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. These programs are designed to provide funds for expenses that are underinsured or not covered by insurance. They are available only to homeowners and renters who are United States citizens, non-citizen nationals, or qualified aliens affected by the disaster. The following is a list of the types of assistance available through this program and what each provides.

Housing Assistance (HA)-

Temporary Housing - homeowners and renters receive funds to rent a different place to live or a temporary housing unit when rental properties are not available.

Repair - homeowners receive grants to repair damage from the disaster that is not covered by insurance. The goal is to make the damaged home safe and sanitary.

Replacement - homeowners receive limited funds to replace their destroyed home.

Semi-Permanent or Permanent Housing Construction - This type of assistance occurs only in insular areas or remote locations specified by FEMA, where no other type of housing assistance is possible.

Other Needs Assistance (ONA)-

Applicants receive grants for necessary and serious needs caused by the disaster. This includes personal property, transportation, funeral, medical, dental, moving and storage, and other expenses that FEMA approves. The homeowner or renter may need to apply for a SBA loan before receiving assistance.

Small Business Administration: Disaster Loans

The U.S. Small Business Administration (SBA) can make federally subsidized loans to repair or replace homes, personal property, or businesses that sustained damages not covered by insurance. The SBA can provide three types of disaster loans to qualified homeowners, renters and businesses:

- (1) **home disaster loans** to homeowners and renters to repair or replace disaster-related damages to home or personal property,
- (2) **business physical disaster loans** to business owners to repair or replace disaster-damaged property, including inventory, and supplies; and
- (3) **economic injury disaster loans**, which provide capital to small businesses and

small agricultural cooperatives to assist them through the disaster recovery period.

For many individuals the SBA disaster loan program is the primary form of disaster assistance.

Disaster Unemployment Assistance

The Disaster Unemployment Assistance (DUA) program is funded by FEMA and administered, under a delegation of authority, by the U.S. Department of Labor. DUA provides unemployment benefits and re-employment services to eligible individuals who have become unemployed because of major disasters. DUA benefits are generally paid up to 26 weeks beginning with the first week following the date the major disaster began and ending with the 26th week following the date the major disaster is declared by the President, as long as the individual's unemployment continues to be a direct result of the major disaster. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other unemployment compensation.

All unemployed individuals must register with the state Workforce Agency in the declared state by phone, internet, or in person at local claims offices to determine their eligibility for the DUA program.

Legal Services

Pursuant to 42 USC §5182 of the Stafford Act, whenever the President declares a major disaster, FEMA, through a Memorandum of Agreement with the Young Lawyers Division of the American Bar Association, provides free legal assistance to disaster survivors. Legal advice is limited to cases that will not produce a fee (i.e., these attorneys work without payment). A legal service hotline toll-free number may also be available as a means for individuals to contact the volunteer lawyers for assistance with legal questions and concerns. Cases that may generate a fee are turned over to the local lawyer referral service. The assistance that participating lawyers provide typically includes:

- Assistance with insurance claims (life, medical, property, etc.);
- Assistance with home repair contracts;
- Counseling on landlord/tenant problems;
- Assisting in consumer protection matters, remedies, and procedures and
- Replacement of wills and other important legal documents destroyed in a major disaster

Disaster legal services are provided to low-income individuals who, prior to or because of the disaster, are unable to secure legal services adequate to meet their needs as a consequence of a major disaster.

If the loss was sustained from a federally declared disaster, the taxpayer may choose which of those two tax years provides the better tax advantage.

The Internal Revenue Service (IRS) can expedite refunds due to taxpayers in a federally declared disaster area. An expedited refund can be a relatively quick source of cash, does not need to be repaid, and does not need an Individual Assistance declaration. It is available to any taxpayer in a federally declared disaster area.

Crisis Counseling

The Crisis Counseling Assistance and Training Program (CCP) is designed to provide supplemental funding to states for short-term crisis counseling services to people affected in Presidentially declared disasters. Supplemental funding for crisis counseling is available to the state through two grant programs: the Immediate Services Program, which provides funds for up to 60 days of services immediately following a disaster declaration; and the Regular Services Program, which provides funds for up to nine months following a disaster declaration. A state may request either or both types of funding. The following services are offered under the CCP grant program:

- Individual Crisis Counseling - Helps survivors understand their reactions,

improve coping strategies, review their options, and connect with other individuals and agencies that may assist them.

- Basic Supportive or Educational Contact - General support and information on resources and services available to disaster survivors.
- Group Crisis Counseling - Group sessions led by trained crisis counselors who offer skills to help survivors cope with their situations and reactions.
- Public Education - Information and education about typical reactions, helpful coping strategies, and available disaster-related resources.
- Community Networking and Support - Relationship building with community resource organizations, faith-based groups, and local agencies.

To be eligible for crisis counseling services funded by this program, the person must be a resident of the designated area or must have been located in the area at the time the disaster occurred. The person must also have a mental health problem which was caused by or aggravated by the disaster or its aftermath, or he or she must benefit from services provided by the program.

Disaster Case Management

The Disaster Case Management (DCM) Program is funded by FEMA and implemented in partnership with the U.S. Department of Health and Human Services Administration for Children and Families (ACF). Under this program FEMA offers a two-phased approach to assist disaster survivors with disaster caused unmet needs.

Phase I Direct Federal DCM Services - This is the rapid response element of DCM and includes the rapid deployment of a national team to the impacted area to begin immediate outreach and assessment with eligible clients impacted by the disaster. This team is on the ground within 72 hours of deployment. Team deployments may last 30 to 180 days, depending on the state's need.

Phase II DCM Grant – This is a federal grant to states to support the delivery of long-term DCM assistance up to 24 months from the date of the declaration, or if Phase I was implemented, an additional 18 months not to exceed a total of 24 months. This grant makes funds available to the state for disaster case managers to work directly with disaster survivors to assist them with the development of a disaster recovery plan that may include referrals, monitoring of services and advocacy, when needed.

Internal Revenue Service Special Tax Considerations

Taxpayers who have sustained a casualty loss from a declared disaster may deduct that loss on the federal income tax return for the year in which the casualty actually occurred, or elect to deduct the loss on the tax return for the preceding tax year. The National Disaster Relief Act provides the following tax benefits:

- Allows all taxpayers, not just those who itemize, to claim the casualty loss deduction regardless of the taxpayer's adjusted gross income level.
- Increases the amount by which all individual taxpayers must reduce their personal casualty losses from each casualty from \$100 to \$500 for taxable years beginning after Dec. 31, 2008. The reduction amount returns to \$100 for taxable years beginning after Dec. 31, 2009.
- Removes the requirement that the net casualty loss deduction be allowed only if the casualty loss exceeds 10 percent of the taxpayer's adjusted gross income.
- Provides a five-year net operating loss (NOL) carryback for qualified natural disaster losses.
- Waives certain mortgage revenue bond requirements for affected taxpayers and allows the bond proceeds to be used for rebuilding.

PUBLIC ASSISTANCE

The Public Assistance Program provides supplemental Federal disaster grant assistance for the repair, replacement, or restoration of disaster-damaged, publicly owned facilities, and the facilities of certain Private Non-Profit (PNP) organizations, following a Presidentially declared disaster or emergency. Eligible applicants include the states, local governments, Federally-recognized Indian tribal governments, and certain PNP organizations. Eligible PNP facilities generally include medical, custodial care, educational, emergency (fire, police and EMS), utilities, and irrigation facilities, as well as other PNP facilities that provide essential services of a governmental nature to the general public. PNPs that provide “critical services” (power, water--including water provided by an irrigation organization or facility, sewer, wastewater treatment, communications, educational facilities and emergency medical care) may apply directly to FEMA for a disaster assistance. All other PNPs must first apply to the Small Business Administration (SBA) for a disaster loan. If the PNP is declined for a SBA loan or the loan does not cover all eligible damages, the applicant may re-apply for FEMA assistance.

As soon as practicable after the declaration, the state, assisted by FEMA, conducts the Applicant Briefings for state, tribal, local and PNP officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed with the state within 30 days after the area is designated eligible for assistance. Following the Applicant’s Briefing, a Kickoff Meeting is conducted with each Applicant where damages will be discussed, needs assessed, and a plan of action put in place. A combined Federal/state/tribal/local team proceeds with Project Formulation, which is the process of documenting the eligible facility, the eligible work, and the eligible cost for restoring the damages to every public or PNP facility identified by state or local representatives. The team prepares a Project Worksheet (PW) for each project. Projects fall into the following categories:

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other

For insurable structures within special flood hazard areas (SFHA), primarily buildings, assistance from FEMA is reduced by the amount of insurance settlement that could have been obtained under a standard NFIP policy. For structures located outside of a SFHA, FEMA will reduce the amount of eligible assistance by any available insurance proceeds. The Applicant must also obtain and maintain insurance on damaged insurable facilities, in the amount of the eligible damage for the hazard that caused the damage, as a condition of receiving PA funding.

FEMA reviews and approves the PWs and obligates the Federal share of the costs (which cannot be less than 75 percent) to the state. The state then disburses funds to local applicants. Once a declaration has been made, a tribal government may request to serve as its own Grantee for Public Assistance.

Projects falling below a certain threshold are considered ‘small.’ For Fiscal Year 2019, that threshold is \$128,900. For small projects, payment of the Federal share of the estimate is made upon approval of the project and no further accounting to FEMA is required. For large projects, payment is made on the basis of actual costs determined after the project is completed; although interim payments may be made as necessary. Once FEMA obligates funds to the state, further management of the assistance, including disbursement to subgrantees is the responsibility of the state. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance and compliance with the law and regulations.

HAZARD MITIGATION

Hazard Mitigation refers to sustained measures enacted to reduce or eliminate long-term risk to people and property from natural hazards and their effects. In the long term, mitigation measures reduce personal loss, save lives, and reduce the cost to the nation of responding to and recovering from disasters.

Two sections of the Stafford Act, §404 and §406, authorize hazard mitigation funds when a Federal disaster has been declared. In each case, the Federal government can provide up to 75 percent of the cost, with some restrictions.

Through the Hazard Mitigation Grant Program (HMGP), authorized by §404 of the Act, communities can apply for mitigation funds through the state. The state, as grantee, is responsible for notifying potential applicants of the availability of funding, defining a project selection process, ranking and prioritizing projects, and forwarding projects to FEMA for funding. The applicant or subgrantee carries out approved projects. The state, local government or homeowner must provide a 25 percent match, which can be fashioned from a combination of cash and in-kind sources. Federal funding from other sources cannot be used for the 25 percent non-federal share with one exception. Funding provided to states under the Community Development Block Grant program from the Department of Housing and Urban Development can be used for the non-federal share.

Total Federal funding under HMGP is based on a sliding scale of the estimated grants for individual assistance programs and public assistance projects. Section 322 of the Disaster Mitigation Act of 2000 emphasizes the importance of planning in reducing disaster losses. States were required to develop a State Mitigation Plan that provided a summary of the hazards facing them, an assessment of the risks and vulnerabilities to those hazards, and a strategy for reducing those impacts. These plans were required by May 1, 2005 as a condition of non-emergency assistance under the Stafford Act, and must be reviewed and updated every three years.

States may choose to develop an Enhanced State Mitigation Plan in order to receive an increased amount of up to 20 percent for Hazard Mitigation Grant Program funding. By November 1, 2004, local jurisdictions also were required to develop mitigation plans in order to be eligible for project grant funding under the Hazard Mitigation Grant Program. In addition, states may use a set-aside of up to five percent of the total HMGP funds available for mitigation measures at their discretion. To be eligible, a set-aside project must be identified in a state's hazard mitigation plan and fulfill the goal of the HMGP, that is, to reduce or prevent future damage to property or prevent loss of life or injury.

Eligible mitigation measures under the HMGP include acquisition or relocation of property located in high-hazard areas; elevation of flood prone structures; seismic rehabilitation of existing structures; strengthening of existing structures against wildfire; dry flood proofing activities that bring a structure into compliance with minimum NFIP requirements and state or local code. Up to seven percent of the HMGP funds may be used to develop state and/or local mitigation plans.

All HMGP projects, including set-aside projects, must comply with the National Environmental Policy Act and all relevant Executive Orders. HMGP grants cannot be given for acquisition, elevation, or construction purposes if the site is located in a designated Special Flood Hazard Area (SFHA) and the community is not participating in the NFIP.

Funding under §406 that is used for the repair or replacement of damaged public facilities or infrastructure may be used to upgrade the facilities to meet current codes and standards. It is possible for mitigation measures to be eligible for funding under both the HMGP and §406 programs; however, if the proposed measure is funded through §406, the project is not eligible for funds under the HMGP as well.

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Region 2

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Region 3

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