

# UNDERSTANDING THE STAFFORD ACT: Its Effect on Public Entities



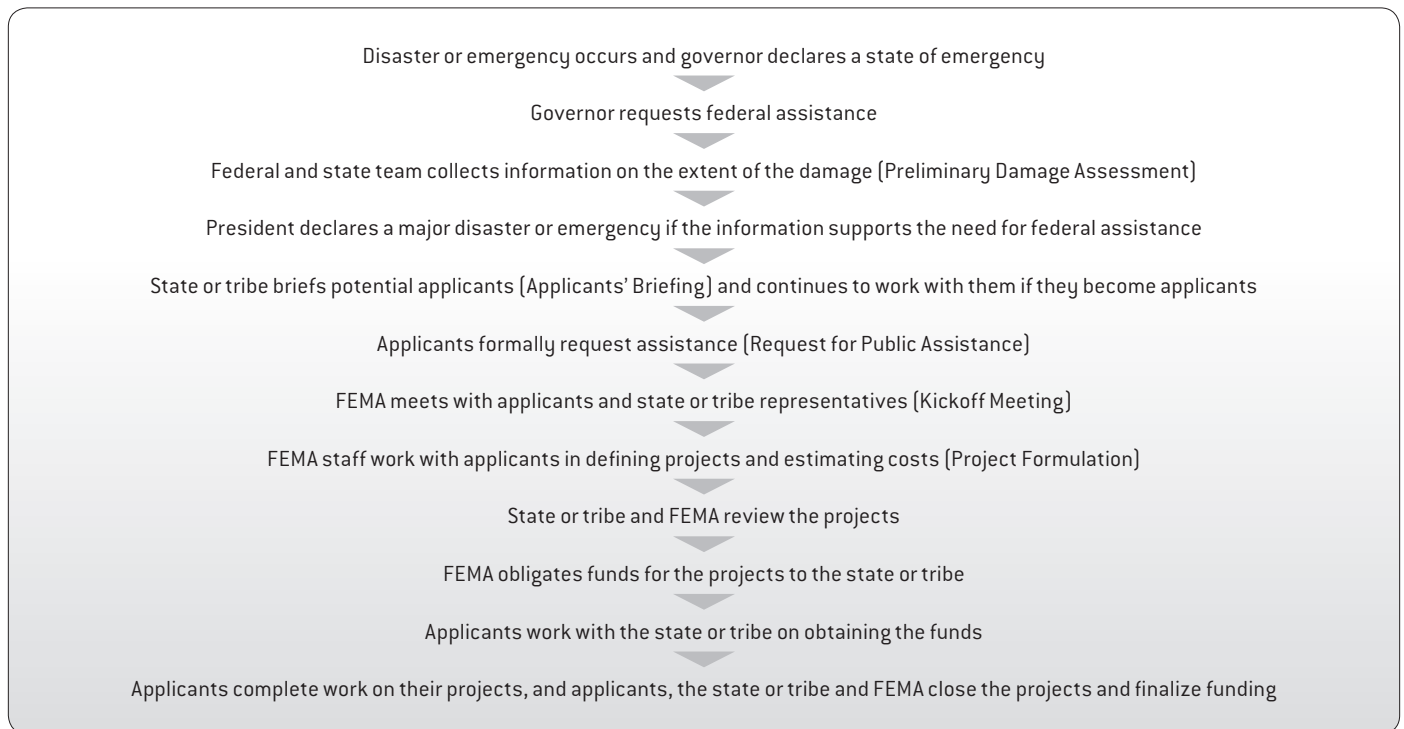
## THE FEDERAL EMERGENCY MANAGEMENT AGENCY: Partner in Infrastructure Recovery

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**W**hen a disaster or emergency occurs in the United States, it is the responsibility of the local community and the state or tribal government to respond. However, their combined efforts often are not sufficient to effectively address the direct results of the most serious events. These situations call for federal assistance. The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the president to provide federal assistance to supplement state, tribal, and local efforts. One of the responsibilities of the Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security, is to provide help through the Public Assistance Program. The Public Assistance Program provides over \$2.5 billion annually in cost-shared grants for debris removal, emergency protective measures, and repair or replacement of damaged infrastructure. The goal of the program is to assist communities in recovering from the devastating effects of disasters and emergencies by providing technical assistance and financial grants in an efficient, effective, consistent, and customer-friendly manner. To assure that those hurt in the disaster receive the maximum benefits for which they are eligible, it is important that everyone involved in the grant program share a common understanding of what the program can provide. By understanding it, applicants for assistance can participate as knowledgeable partners in obtaining help.

### The Public Assistance Program

The program is straightforward. The sequence of program steps is shown in Figure 1.



*Figure 1*

The program uses a four-level series of questions to determine eligibility for program funds. A determination of ineligibility at one level removes the applicant from further consideration. The levels are as follows:

- First, the applicant must be eligible (that is, be a public entity, a tribal government or entity, or a certain type of private nonprofit organization);
- Second, the damaged facility must be an eligible facility (that is, be the responsibility of an eligible applicant and meet additional requirements if the responsibility of an eligible private nonprofit organization);
- Third, the emergency or permanent work requested must be eligible (that is, be disaster-related, be located in the designated disaster area, be the applicant's responsibility, and not be fundable by another federal agency); and

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- Fourth, the costs of the emergency or permanent work must be eligible (that is, be reasonable and necessary to accomplish eligible work, comply with federal, state, and local laws and regulations, and include the deduction of insurance proceeds, salvage value, and purchase discounts).

Program documents explain these criteria in depth and are widely available. Using program documentation, informed State and tribal personnel and applicants generally have enough information to make their own eligibility determinations.

The most frequently asked question usually concerns the actual funding of projects. Regulations provide for grant funds to be awarded to the grantee (that is, the state or tribe, if the tribe is serving as the grantee). FEMA obligates funds to the grantee, and the grantee disburses funds to the applicants. Applicants can receive a portion of their emergency funds right after the disaster based on an estimate of emergency work. Otherwise, funds are paid in either of two ways, depending on the size of the project. If the project is small (that is, under \$60,900 for the year ending September 2008), the amount of funding generally is based on estimated costs and is paid as a final payment. The estimated cost of large projects is based on a forward pricing model called the Cost Estimating Format (CEF), which is based on construction industry standards. It is used to provide up-front estimates for budgeting purposes and to help applicants manage their projects. While the CEF is used to provide estimates for budgeting and planning, funding for large projects ultimately is based on documented actual costs. When the work is completed on a large project or on all of an applicant's small projects, FEMA finalizes payments.

## Special Considerations

Eligibility is affected by what FEMA calls "Special Considerations." These considerations include insurance, floodplain management, hazard mitigation, environmental protection, and historic preservation and cultural resources. Each is very important and can affect the funding of disaster recovery. Since insurance considerations are especially pertinent to *Public Risk* readers, the provisions of the program relating to insurance are included here. The two primary points are:

- By law, FEMA cannot provide disaster assistance if damages or losses are covered by insurance. FEMA must reduce all project grants for insured property by the amount of actual insurance proceeds received or by the amount of proceeds that can be reasonably anticipated from a review of the insurance policy. By taking this reduction, FEMA eliminates the potential for duplication of benefits from the same loss. This applies to both general property insurance and flood insurance.
- FEMA requires applicants to obtain and maintain insurance on facilities repaired or replaced with FEMA funding. As a condition of receiving federal assistance, the applicant must obtain and maintain insurance in at least the amount of the eligible damage to protect against future loss to the property from the same peril. The required insurance coverage must be obtained, or letter of commitment accepted by the state or tribe, prior to the release of any federal funds. If the insurance is not maintained, the facility will not receive assistance for the same peril in future events.

Other Special Considerations in determining eligibility require the evaluation of projects for cost-effective mitigation measures that could be incorporated in repair work, compliance with applicable federal floodplain management and environmental laws and their implementing regulations and executive orders, and compliance with applicable federal historic preservation laws and regulations.

## Initiatives

The Public Assistance Program is committed to addressing emerging challenges and considers program improvement measures a very high priority. Three of our current initiatives are: the Public Assistance Catastrophic Disaster Recovery Plan, a comprehensive Public Assistance Operating Manual, and changes in the insurance rules that will better define the relationship between the Public Assistance Program and insurance coverage. Each initiative is critically important for helping us maintain the readiness and responsiveness of the program.

**Public Assistance Catastrophic Disaster Recovery Plan.** Our planning assumptions include the concept that the disasters we have known are not the worst that we will know. We anticipate that the magnitude and complexity of management, logistics, and resource allocation issues will increase exponentially in an environment of widespread destruction. In such an environment, it also is likely that there will be severe disruptions of critical government services that will render some applicants unable to participate in the grant program in the traditional way.

Accordingly, we are developing a Public Assistance Catastrophic Disaster Recovery Plan that will optimize program delivery in the worst of disasters. The plan takes into account the devastating effects of catastrophic events and identifies methods, means, and approaches that will work in concert to minimize losses, overcome resource limitations, and accelerate recovery. Key concepts include:

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- Triage of applicants by recovery status (for example, a “red” applicant is one with an extreme disruption of government function and services, a severely impacted infrastructure, and a high percentage of replacement projects);
- Management of the Public Assistance Program in phases (for example, Phase 1 will support applicants’ efforts to restore essential government services); and
- A matrix organization that is flexible in size and capabilities, based on applicants’ needs.

A priority aspect of this initiative is to work with the grant applicant and the applicant’s state or tribe to develop accurate damage assessments as early in the recovery process as possible. This will result in more precise scopes of work, more accurate estimates of damage repair, and simpler disaster closeout. As part of this Public Assistance Catastrophic Disaster Recovery initiative, we also are examining current policies and procedures and identifying those that could be modified for the most efficient delivery of assistance in all disasters, including catastrophic events.

**Public Assistance Operations Manual.** The Public Assistance Program has long-promoted transparency in its operation. Believing that it is in the interest of applicants, the states, and FEMA to operate from a wealth of clear and readily-available information, we publish program policies and procedures. We use the published information to ensure nationwide consistency in eligibility decisions, promote transparent decision-making, and train and maintain a first-rate staff that knows the program thoroughly. FEMA partners use the same information to immediately and conveniently answer questions about the program and its implementation.

Adding to our current policies, fact sheets, disaster-specific guidance, guides, digests, job-aids, and handbooks, we are developing a comprehensive operations manual that combines the guidance on the management of, and procedures for, administering the Public Assistance Program. This tool will present the program in a sequence of steps, from Preliminary Damage Assessment to Grant Closeout. It is being developed in close cooperation with our regional and state partners and is well on its way to completion.

**Clarifying the relationship of the grant program and insurance coverage.** The interplay of the Public Assistance Program grants and insurance coverage is of great importance and each disaster brings up challenging new issues. The new insurance rule, which is not yet finalized, addresses many of the issues that have generated questions and discussion in past disasters. Some of the topics included in the new rule are:

- Definitions of terms that some have found unclear;
- Deductibles;
- Insurance purchase requirements;
- Repetitively damaged facilities;
- “Rainy day” funds;
- Apportionment of insurance coverage when an insurance policy covers both eligible and ineligible damages;
- Guidance to state insurance commissioners for certifications that the type and extent of the required insurance is not reasonable or readily available;
- Self-insurance;
- Guidance for applicants seeking additional funding when the actual insurance proceeds received are less than the anticipated amount; and
- Potential FEMA reductions in eligible assistance.

The rule has many more provisions that will be of interest to *Public Risk* readers. However, the rule will not be available until it is finalized later this year.

## The Bottom Line

A fundamental principle of the Public Assistance Program is that it operates more efficiently, effectively, and consistently when all participants share an understanding of the program policies, procedures, and tools. With a shared understanding of the program, FEMA staff, the state and tribal staff, and applicants can participate as true partners in infrastructure recovery, and ensure that communities hurt in disasters receive the maximum benefits for which they are eligible.

### ABOUT THE AUTHOR:

Mr. Walke serves as Director, Public Assistance Division, Disaster Assistance Directorate, FEMA. In addition to being a licensed professional engineer and a member of the Senior Executive Service, Mr. Walke holds the degrees of Master of Public Administration from the Virginia Polytechnic Institute and State University and Master of Science degree in National Resource Strategy from the National Defense University.