



Will FEMA Recommend Public Assistance Following a Disaster? Proposed Rulemaking

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This Insight reviews the Federal Emergency Management Agency’s (FEMA’s) proposed rulemaking on assessing requests for Public Assistance (PA) for major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([Stafford Act](#), P.L. 93-288, as amended). FEMA estimated that the rulemaking, if finalized, would significantly reduce PA obligations. The public comment period closed in April 2021. As of April 2022, FEMA reported to CRS that the agency’s next action on the rule is undetermined, and that the “does not expect to have a regulatory action” before December 10, 2022.

Current Process to Assess Requests for Public Assistance

PA supports state, local, tribal, and territorial governments (SLTTs), and eligible [nonprofits](#) when requested by a governor or tribal chief executive and authorized through a presidential Stafford Act declaration of emergency or major disaster (see [Figure 1](#)). On average, PA [accounts](#) for the largest source of [spending](#) authorized under the Stafford Act.

FEMA determines whether there are unmet needs that may warrant PA, and makes a recommendation to the President, who has the sole authority to issue a declaration authorizing PA for [Emergency Work](#) ([debris removal](#) and/or [emergency protective measures](#)) and/or [Permanent Work](#) (reconstruction of eligible [facilities](#)).

For major disasters, FEMA uses [multiple factors](#) to assess requests for PA. FEMA estimates the cost of PA across the affected jurisdiction (particularly eligible uninsured costs of facility reconstruction). FEMA typically only recommends that the President make PA available when

1. Estimates exceed [\\$1 million](#) across a state or territory, or [\\$250,000](#) across a tribe; and
2. Costs for states and territories exceed “per-capita indicators” annually-adjusted to account for inflation. For FY2022, these indicators are [\\$1.63](#) across affected states or territories, and [\\$4.10](#) across affected counties.

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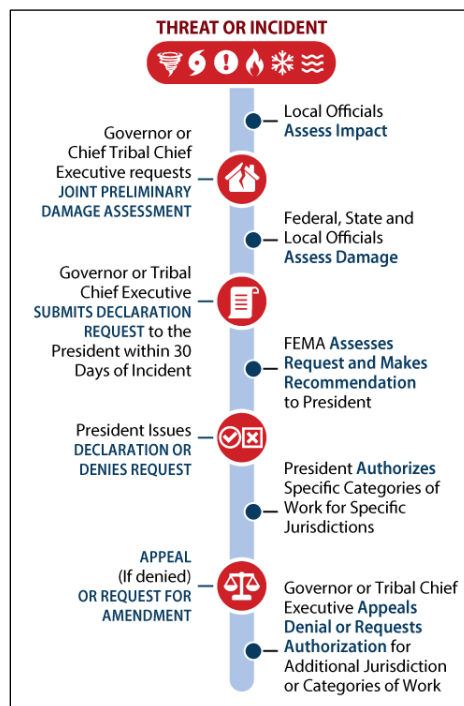
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FEMA exercises discretion when making recommendations to the President. FEMA may consider a [recent history of disasters](#) that exhausted SLTT capacity, severe local impacts, or the use of mitigating measures (which may have reduced damages)—and recommend approval even when cost thresholds are not met.

While no single factor determines FEMA’s recommendations, per-capita indicators have historically proved crucial. In 2012, the Government Accountability Office (GAO) [found](#) that 99% of analyzed major disaster declarations reflected damage estimates where indicators were met or exceeded. The exclusive use of per-capita indicators may violate the Stafford Act [prohibition](#) on the use of sliding scales to deny federal assistance.

Figure 1. Stafford Act Declaration Request Process



Source: Developed by CRS based on 44 C.F.R. §§206.31-206.48.

Proposed Rule on Assessing Requests for Public Assistance

In 2012, GAO [found](#) that FEMA’s indicators had not kept pace with inflation and per-capita income gains. GAO [suggested](#) that FEMA increase the thresholds or identify another metric (e.g., [total taxable resources; TTR](#)) to assess SLTT capacity to respond and recover.

The enactment of the [Disaster Recovery Reform Act of 2018](#) (DRRA, P.L. 115-254) [required](#) FEMA to review the factors used to assess requests for PA. [Section 1232](#) required greater consideration to severe local impacts and recent disasters. FEMA [reported](#) that it updated FEMA’s declaration request [template](#) to implement Section 1232. [Section 1239](#) required FEMA to review and update the PA cost-estimating factors following consultation with SLTTs.

FEMA subsequently published [notice](#) of proposed rulemaking in December 2020 modifying PA cost estimates by

1. Increasing minimum damage threshold for states and territories from \$1 million to \$1,535,000;
2. Increasing “baseline” per-capita indicator from \$1.50 to \$2.32, reflecting inflation gains;
3. Adjusting individual state (not territory) per-capita indicators based on TTR; and
4. Using of annual population estimates (rather than decennial census data).

FEMA estimates that per-capita thresholds may increase between **2% and 113%** under the rule (using FY2019 figures). To demonstrate the effects of the proposed rule, **FEMA modeled** these policy changes on disaster activity between 2008 and 2017 and found the following:

- 27% (159) fewer major disaster declarations would have included PA, averaging 16 fewer annually;
- 7,456 entities would have received less federal assistance; and
- FEMA would not have transferred approximately \$2.1 billion (undiscounted) in federal assistance.

Policy Issues and Comments—Proposed Rulemaking

Some Members of Congress and other stakeholders have raised concerns during the rulemaking, including the following

Appropriate Provision of Public Assistance

GAO previously raised concerns that artificially low indicators led FEMA to recommend that PA be provided when SLTTs did not require federal assistance. In response, FEMA’s proposed rulemaking shifts the cost of smaller disasters to SLTTs.

However, other stakeholders have noted that state disaster spending is **highly variable and noted** that **most incidents** are already managed without federal assistance. The proposed rule **could suddenly and significantly** reduce necessary federal assistance.

Inequitable Access to Public Assistance

Some worry that the indicators (especially if increased) may **disadvantage small, rural and/or less wealthy** areas with less costly facilities and damage, or disadvantage communities in states with **high populations** and/or **TTR**. FEMA **reports** it will consider severe local impacts in accordance with DRRA, however, some public comments requested greater transparency into its methods and the **related** rulemaking.

Recurring, Slow-Onset, or Compound Disasters

FEMA only measures costs incurred during a certain time period, the “**incident period**.” Damages accrued during **recurring, slow-onset, or compound events** (e.g., floods, sea level rise, fires following an earthquake) may not always coincide with the incident period, jeopardizing the availability of PA. FEMA’s indicators also measure damages within political boundaries that may not align with the geography of a hazard. The proposed rule does not discuss these issues.

Strain on SLTT Capacity Due to COVID-19 Pandemic

Many **comments** by SLTT stakeholders raised concerns that the proposed rule could dramatically reduce federal assistance for disasters while SLTT capacity is **strained** due to the **COVID-19 pandemic**.

Effects on Disaster Mitigation Efforts

FEMA’s rulemaking [explained](#) that the current indicators may disincentivize SLTT mitigation investments due to the expectation that federal assistance will be provided. FEMA claimed that redistributing costs to states will, by contrast, incentivize mitigation investments, promoting a “resilient ... Nation.” Some comments question this logic and [raise concern](#) that the finalized rule will actually [reduce allocations](#) for FEMA mitigation programs tied to PA spending.

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