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FEMA's Public Assistance Program: A Primer and Considerations for Congress

April 1, 2021

Congressional Research Service
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R46749

CRS REPORT
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Committees of Congress

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SUMMARY

R46749

April 1, 2021

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FEMA's Public Assistance Program: A Primer and Considerations for Congress

The Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program is central to contemporary U.S. federal emergency and disaster relief. Over the past 10 years, PA has been authorized in every county, parish, and municipality in the United States. The reconstruction of entire infrastructure systems following Hurricane Katrina, mass evacuations ahead of California wildfires, and emergency medical care during the Coronavirus Disease 2019 (COVID-19) pandemic were all funded through PA.

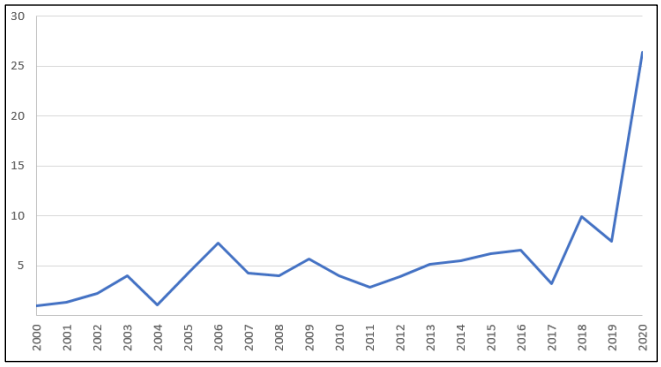
Administered by FEMA, the PA Program assists state, tribal, territorial, and local governments and certain nonprofits with both urgent response and long-term recovery work following a presidential declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, as amended, P.L. 93-288). The Stafford Act provides PA for response and recovery through a federalist model intended to supplement—not supplant—nonfederal resources. FEMA and the state, tribe, or territory that received a declaration jointly administer PA, and the costs are shared between the federal government and nonfederal entities receiving assistance.

Congress has addressed the scope, timeliness, and cost of PA in recent legislation and hearings, often in the wake of severe disasters, The Sandy Recovery Improvement Act of 2013 (Division B of P.L. 113-2;) and the Disaster Recovery Reform Act of 2018 (Division D of P.L. 115-254) included modifications to PA authorities that may expedite the completion of PA projects, reduce PA spending, and promote work that mitigates the risk of future damage. Still, as the frequency and severity of PA-eligible disasters mounted in recent years, so did the utilization and cost of PA.

This report summarizes PA Program authorities and requirements. It also presents considerations relevant to the following policy questions for Congress:

- How, if at all, may Congress seek to respond to recent PA spending increases?
- How can the federal government effectively oversee the PA Program while swiftly assisting disaster-stricken communities?
- How, if at all, may Congress promote resilience through PA?
- How will the federal government address delays in PA project completion and recovery?
- To promote the timely and cost effective-execution of PA projects, Congress recently authorized Alternative Procedures. Has the implementation of Alternative Procedures met these goals?
- How may Congress seek to address the potential strain of PA on local, state, and federal workforce capacity, given the demands of grant management?
- To what extent should FEMA exercise discretion in determining what costs are eligible for PA?

FEMA's Public Assistance Program Obligations
FY2000-FY2020 (billions)



Source: CRS analysis of data provided by FEMA Office of Congressional and Legislative Affairs.

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Introduction

In terms of cost, scope, and application, Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program is arguably the most extensive general disaster relief program active in the United States today. Over the past 10 years, Presidents have authorized PA for every county in the United States. On average, PA accounts for the largest share of obligations from the Disaster Relief Fund (DRF), and spending is increasing. PA obligations have increased in the past three years, and reached a new high in FY2020 (see "PA Funding").

Administered by the FEMA, PA is often the first federal assistance to be authorized and the last to close out in a disaster-stricken community. Under the authorities of the Robert T. Stafford Emergency Assistance and Disaster Relief Act (the Stafford Act, as amended, P.L. 93-288),[1] the President may authorize PA to provide a range of assistance through an emergency or major disaster declaration. PA has funded mass evacuations ahead of California wildfires, emergency medical care during the Coronavirus Disease 2019 (COVID-19) pandemic, and the reconstruction of entire infrastructure systems damaged by Hurricane Katrina.[2]

The PA Program faces historic demands. At this moment in the 117th Congress, PA is authorized in every locality in the United States to provide relief from the COVID-19 pandemic—an unprecedented use of PA. Additionally, some jurisdictions have concurrent PA authorizations for additional incidents, including 2020 flooding in the Midwest, the 2020 flooding and dam breaches in Michigan, the December 2020 Nashville bombing, and early 2021 severe winter storms in Texas, Oklahoma, and Louisiana.[3] Over the past decade, Congress has revised key PA authorities to address the complexity, growing cost, and expanding scope of the PA Program. This report summarizes issues facing the 117th Congress during this period of extensive utilization of the PA Program.

Scope and Structure of Report

This report includes three major sections:

- The first part provides an overview of PA statutory authorities, rules, policies, and administration.
- The second part discusses the funding of the PA Program and describes trends in historical DRF obligations for PA, including the growth in PA expenditures and the breakdown of PA obligations by type of work, hazard, and geography.
- The third part offers considerations for Congress regarding the PA Program. Considerations include PA spending increases, oversight issues, and promoting resilience.

[1] 42 U.S.C. §§5121 et seq.

[2] FEMA, "Six Counties Receive Federal Help with Wildfire Debris Removal," Sept. 5, 2020, https://www.fema.gov/press-release/20201016/six-counties-receive-federal-help-wildfire-debris-removal; FEMA, "Mississippi Hurricane Katrina: A Decade of Progress Through Partnerships," https://www.fema.gov/media-library-data/1439215278919-27b976d9ae441db76490d3399bdfe16b/Hurricane-Katrina-10-Year-MS-Statewide.pdf; CRS Analysis of OpenFEMA, "Public Assistance Funded Projects—Details," as of August 2, 2020.

[3] FEMA, "Declared Disasters," https://www.fema.gov/disasters/disaster-declarations?field_dv2_state_territory_tribal_value=All&field_year_value=All&field_dv2_declaration_type_value=All&field_dv2_incident_type_target_id_selective=All.

This report additionally includes the following appendices:

- **Appendix A** includes a snapshot of PA deployed to respond to the COVID-19 pandemic.
- **Appendix B** describes how FEMA delivers PA funds to disaster-stricken entities.
- **Appendix C** provides a bibliography of guidance for PA Alternative Procedures, a variation on the standard procedures FEMA uses to deliver PA.
- **Appendix D** provides a list of acronyms referenced in the report.

Program Overview

The PA Program provides assistance to states, tribes, territories, local governments, and eligible nonprofits—not businesses, individuals, or homeowners (many of whom are eligible for assistance through other programs). PA is not automatically authorized for all incidents; it is only authorized when the President declares an emergency or major disaster declaration under the Stafford Act (see "Requesting, Authorizing, and Administering PA").[4]

Like all Stafford Act assistance, PA is designed to supplement—not supplant—nonfederal resources for emergency response and recovery. The federal government shares the cost of work eligible for PA (see "Cost-Share") with nonfederal entities receiving assistance. PA awards fund the costs of response activities (referred to as *PA emergency work*), including debris removal and emergency protective measures, or recovery (referred to as *PA permanent work*), meaning the costs of restoring or replacing eligible disaster-damaged public and nonprofit facilities. The DRF funds PA administration and awards along with other types of Stafford Act assistance.[5]

Terms

Within this report, the term "state" refers to states and territories. For purposes of the Stafford Act, "'State' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands" (42 U.S.C. §5122(4)).

The term "tribes" refers to Indian tribal governments. Per the Stafford Act, "[t]he term 'Indian tribal government' means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994" (42 U.S.C. §5122(6)).

Generally, Stafford Act assistance is requested by the "governor" (i.e., "the chief executive of any State" (42 U.S.C. §5122(5)), or the "chief executive" (i.e., "the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government" (42 U.S.C. §5122(12)).

The term "Recipient" in this report refers to "an entity that receives a Federal award directly from a Federal awarding agency to carry out an activity" and the term "Applicant" refers to entities that are responsible for PA projects, per FEMA, *Public Assistance Program and Policy Guide (PAPPG 2020)*, FP 104-009-2, effective June 1, p. 21-22, https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf (hereinafter FEMA, *PAPPG 2020*).

[4] See, for example, Stafford Act Section 403(a); 42 U.S.C. § 5170b(a), which states that "[i]n any major disaster, the President may" provide certain assistance, and, "Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows…" See also 44 C.F.R. §206.240(b). For more information on declarations, see CRS Report R42702, *Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay.

[5] For more information on the Disaster Relief Fund, see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

"Nonfederal" describes resources, entities, or authorities exclusive of the federal governments. Some nonfederal entities may apply for PA, becoming PA Applicants. This report refers to state, local, tribal, and territorial governments as SLTTs.

PA is authorized by multiple sections of the Stafford Act (see **Table 1**).[6] Recent statutory revisions of PA include those enacted under the Sandy Recovery Improvement Act (SRIA, Division B of P.L. 113-2; see "Alternative Procedures")[7] and the Disaster Recovery Reform Act of 2018 (DRRA; Division D of P.L. 115-254) explicitly undertaken to reduce costs, increase the flexibility of the program, and promote resilience in PA-funded work (see "Building Standards" and "Promoting Resilience Through PA").[8]

FEMA administers PA;[9] agency rules governing the PA Program are promulgated in 44 C.F.R. §206. The statutory and regulatory frameworks governing PA are further interpreted and detailed in numerous FEMA guidance and policy documents describing program procedures and disaster-specific rules, among other items.[10]

Table 1. Public Assistance Authorizing Statutes

Stafford Act Section	Assistance Authorized
Section 407, 428, or 502	Emergency Work: Debris Removal[a]
Section 402, 403, 418, 419, or 502[c]	Emergency Work: Emergency Protective Measures[a]
Section 406 or Section 428	Permanent Work: Roads/Bridges[b]
Section 406 or Section 428	Permanent Work: Water Control Facilities[b]
Section 406 or Section 428	Permanent Work: Buildings/Equipment[b]
Section 406 or Section 428	Permanent Work: Utilities[b]
Section 406 or Section 428	Permanent Work: Parks, Recreational, and Other Facilities[b]
Section 324	Management of Public Assistance and Hazard Mitigation Assistance Grants[a]

Source: FEMA, *Public Assistance Program and Policy Guide*, FP 104-009-2, effective June 1, 2020, pp. 17-18.

[6] The Stafford Act additionally authorizes the President to provide Individual Assistance (IA), which helps families and individuals respond to post-disaster needs, and Hazard Mitigation Assistance, which helps communities execute projects that may reduce the loss of life and property from future disasters. For more information, see CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*, by Elizabeth M. Webster; CRS Insight IN11187, *Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance*, by Diane P. Horn.

[7] The Sandy Recovery Improvement Act (SRIA), P.L. 113-2; Stafford Act Section 428. The Public Assistance Program Alternative Procedures are codified at Section 1102 of SRIA; 42 U.S.C. §5189f.

[8] See explanation of revised PA authorities in U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Recovery Reform Act*, report to accompany H.R. 4460, 115th Cong., 2nd sess., H.Rept. 115-1098, part 1 (Washington, DC: GPO, 2018), pp. 15-16; see also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Disaster Recovery Reform Act of 2018*, report to accompany S. 3041, 115th Cong., 2nd sess., S.Rept. 115-446, (Washington, DC: GPO, 2018), pp. 2-4 and Section 1102 of SRIA; 42 U.S.C. §5189f(c).

[9] Executive Order 12148.

[10] See, for example, FEMA, "Policy, Guide, and Fact Sheets," https://www.fema.gov/assistance/public/policy-guidance-fact-sheets; FEMA, "Other Public Assistance Policies and Guidance," https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/other.

Notes:

a. This type of assistance may be made available if authorized pursuant to a presidential declaration of emergency or major disaster.

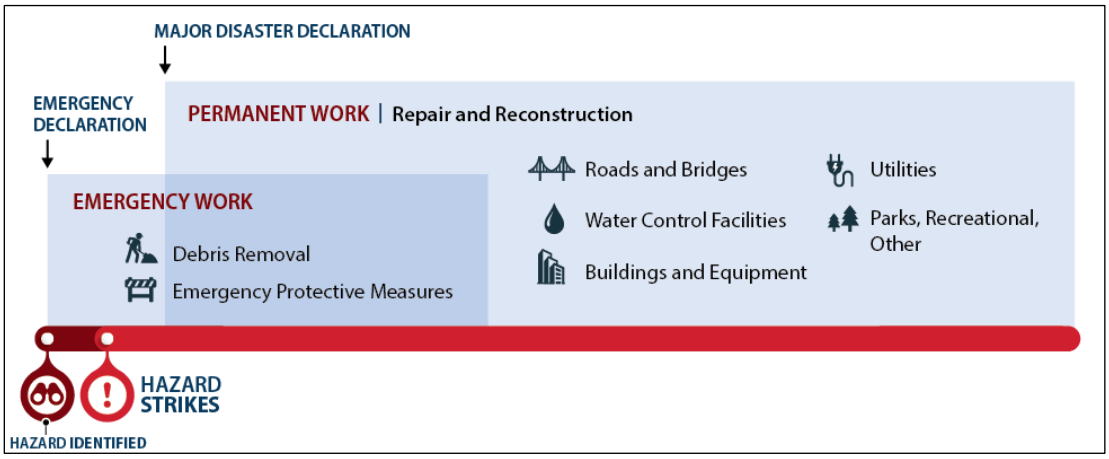
b. This type of assistance may only be made available if authorized pursuant to a presidential declaration of major disaster.

c. PA authorized under Sections 402, 418, and 419 refer to Direct Federal Assistance.

Requesting, Authorizing, and Administering PA

PA is generally available to an affected community only if authorized by a presidential declaration of emergency or major disaster.[11] PA emergency work may be authorized for both emergencies and major disasters, while permanent work may only be authorized for major disasters, as summarized in **Figure 1.**

Figure 1. Forms of Public Assistance Authorized Under Stafford Act Declarations



Sources: Developed by CRS based on 44 C.F.R. §206.204(c) and (d); and FEMA, *Public Assistance Policy and Program Guide,* FP 104-009-2, effective June 1, 2020, p. 51.

Requesting and Authorizing Public Assistance for Emergencies

The Stafford Act defines emergencies broadly: emergencies may be any incident that requires federal assistance to save lives; protect property as well as public health and safety; and lessen or avert the threat of catastrophe.[12] Therefore, a Stafford Act emergency declaration may be issued before a hazard strikes—for example, when a hurricane is projected to make landfall—or after.[13] PA emergency work is often the only type of federal assistance authorized for emergencies declared under the Stafford Act.[14]

[11] See authorities under Stafford Act Sections 402, 403, 407, 418, 419, and 502; 42 U.S.C. §§5170a-5170b, 5173, 5185-5186, 5192. While PA emergency work is also available under Fire Management Assistance Grants (FMAGs), the FMAG program is separate and distinct and administered separately. For more information on FMAGs, see CRS Report R43738, *Fire Management Assistance Grants: Frequently Asked Questions*, by Bruce R. Lindsay and Katie Hoover.

[12] Stafford Act Section 102(1); 42 U.S.C. §5122(1).

[13] Stafford Act Section 501; 42 U.S.C. §5191; 44 C.F.R. §206.35(a).

[14] Other forms of Stafford Act assistance, including most forms of Individual Assistance and the Hazard Mitigation Grant Program, are not available under Emergency Declarations. These programs are available through a major disaster

Generally, a governor or tribal chief executive requests an emergency declaration after determining that a hazard will exceed state or tribal capacity to respond. Governors and tribal chief executives must describe the resources already deployed (including activation of emergency plans) and describe the types of federal assistance required in their request.[15] FEMA then evaluates whether the incident's "severity and magnitude" exceed the response capacity of SLTTs, therefore warranting PA.[16]

Separately, the President may unilaterally declare an emergency for incidents involving federal primary responsibility pursuant to Section 501(b) of the Stafford Act.[17] It is rare, however, for the President to issue a declaration absent a governor or chief executive's request. Historical invocations include incidents on federal property, for example, the attack on the Alfred P. Murrah federal courthouse in Oklahoma City and the Explosion of the Space Shuttle Columbia.[18] In 2020, President Donald J. Trump declared a nationwide emergency for response to the COVID-19 pandemic under this authority—a declaration unprecedented in scope (see **Appendix A**).[19]

Requesting and Authorizing Public Assistance for Major Disasters

The Stafford Act requires that governors or tribal chief executives make a request for a major disaster declaration; the President does not have authority to unilaterally issue such a declaration.[20] PA for a major disaster can authorize federal reconstruction for major losses, which has totaled more than $10 billion for severe events like Hurricane Katrina, Superstorm Sandy, and Hurricane Maria.[21] To assess the request, FEMA conducts a Preliminary Damage Assessment (PDA) jointly with state, local, tribal, and territorial officials (hereinafter SLTTs; see **Figure 2**). PDAs estimate the potential costs of major response and recovery activities.[22]

declaration under the Stafford Act. In very rare cares, emergency declarations may authorize the Individuals and Households Program. See FEMA, "How a Disaster Gets Declared," https://www.fema.gov/disasters/how-declared.

[15] 44 C.F.R. §206.35(c).

[16] 44 C.F.R. §206.35.

[17] Stafford Act Section 501(b); 42 U.S.C. §5191(b).

[18] FEMA, "Notice: Oklahoma; Emergency and Related Determinations," 60 *Federal Register* 22579, May 8, 1995; FEMA, "Notice: Space Shuttle Columbia; Emergency and Related Determinations," 68 *Federal Register 9667*, February 28, 2003.

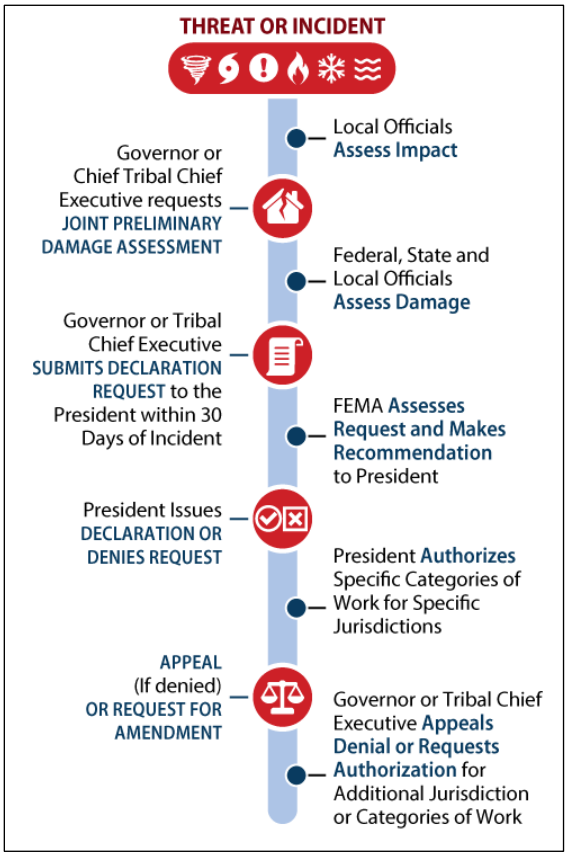
[19] FEMA, "COVID-19 Emergency Declaration," Release Number: HQ-20-017-FactSheet, March 13, 2020, https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration. See also CRS Insight IN11251, *The Stafford Act Emergency Declaration for COVID-19*, by Erica A. Lee, Bruce R. Lindsay, and Elizabeth M. Webster; and CRS Report R46326, *Stafford Act Declarations for COVID-19 FAQ*, by Elizabeth M. Webster, Erica A. Lee, and William L. Painter.

[20] Stafford Act Section 401(a)-(b); 42 U.S.C. §5170(a)-(b).

[21] FEMA, "Louisiana Hurricane Katrina (DR-1603-LA)," https://www.fema.gov/disaster/1603; FEMA, "New York Hurricane Sandy (DR-4085-NY)," https://www.fema.gov/disaster/4085; FEMA, "Puerto Rico Hurricane Maria (DR-4339-PR)," https://www.fema.gov/disaster/4339.

[22] In practice, these estimates generally include the uninsured costs of emergency response and long-term reconstruction work. FEMA, *FEMA Preliminary Damage Assessment Guide*, May 2020, https://www.fema.gov/sites/default/files/2020-07/fema_preliminary-disaster-assessment_guide.pdf; CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

Figure 2. Stafford Act Declaration Request Process



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

FEMA uses PDAs to analyze six factors established in agency regulations to assess a request for a major disaster for states, as defined by the Stafford Act.[23] For requests from tribal chief executives, FEMA additionally considers factors including unique conditions (e.g., remote location), demographics, and economic impact.[24] FEMA then recommends a course of action to the President.[25] While no single factor is determinative, FEMA typically recommends the authorization of PA only if the estimated cost exceeds specific thresholds across the jurisdiction.[26] The factors are the following:

1. **Estimated Cost of Assistance:** FEMA determines whether estimated costs of PA-eligible work across the jurisdiction exceed $1 million total across a state or territory or $250,000 across a tribe.[27] Additionally, for states and territories, costs must meet or exceed annually adjusted per-capita thresholds across the county

[23] 44 C.F.R. §206.48.

[24] For more information, see FEMA, *Tribal Declarations Pilot Guidance*, January 2017, pp. 34-36, https://www.fema.gov/sites/default/files/2020-04/tribal-declaration-pilot-guidance.pdf.

[25] 44 C.F.R. §206.48(a).

[26] These thresholds are called "per-capita indicators." GAO, *Federal Disaster Assistance; Improved Criteria Needed to Assess a Jurisdiction's Capability to Response and Recover on Its Own*, GAO-12-838, September 2012, p. 24 (hereinafter GAO, *Improved Criteria*), https://www.gao.gov/assets/650/648162.pdf.

[27] FEMA, "Tribal Declarations Pilot Guidance," January 2017, https://www.fema.gov/sites/default/files/2020-04/tribal-declaration-pilot-guidance.pdf.

and the state or territory in need.[28] In FY2021, the per-capita threshold across a state or territory requesting PA is $1.55, and across a county is $3.89.[29]

2. **Localized Impacts:** FEMA may recommend authorizing PA in cases of severe, concentrated damages, even when all cost of assistance thresholds are not met.[30] For Indian tribal governments, FEMA considers additional factors, including the economic impact of the disaster and demographic factors of the affected population.
3. **Insurance Coverage in Force:** FEMA reduces the estimated cost of PA based on the actual insurance coverage for PA-eligible work. If a facility is uninsured in violation of previous PA award requirements or Stafford Act insurance requirements (see "Insurance Requirements"), then FEMA will reduce the estimated cost of PA with respect to insurance requirements.[31]
4. **Hazard Mitigation:** FEMA considers how mitigation measures may have reduced the damages. To encourage community resilience efforts, FEMA may authorize PA even when estimated damages do not meet the per capita thresholds if mitigation may have reduced the cumulative losses.
5. **Recent Multiple Disasters:** FEMA considers recent disasters within the disaster-affected jurisdiction to better assess the need for assistance. For example, if a state has exhausted its capacity in response to disasters in the previous 12-24 months, FEMA may consider authorizing assistance even if cost-of-assistance thresholds are not all met.
6. **Programs of Other Federal Assistance:** FEMA considers whether disaster-related needs may be more appropriately met through other federal assistance.

Section 1239 of the Disaster Recovery Reform Act of 2018 (Division D of P.L. 115-254) required FEMA to review and update these factors, particularly the cost of assistance.[32] In December 2020, FEMA published a notice of proposed rulemaking pursuant to this provision that would increase the cost-of-assistance thresholds to account for inflation and income within a jurisdiction.[33] This rulemaking followed several recommendations from the U.S. Government Accountability Office (GAO) that FEMA increase the thresholds or identify a more accurate metric to measure state and

[28] Annually adjusted statewide per capita indicators are available at FEMA, "Per Capita Impact Indicator and Project Thresholds," https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator.

[29] Ibid.

[30] FEMA explains "This is particularly true where critical facilities (such as major roadways, bridges, public buildings, etc.) are affected or where localized per capita impacts are extremely high. For example, localized damages may be in the tens or even hundreds of dollars per capita, even though the overall statewide per capita impact is low." FEMA, "Disaster Declaration Criteria Fact Sheet," December 2019, provided by FEMA Office of Congressional and Legislative Affairs to CRS.

[31] For more information, see FEMA, *FEMA Preliminary Damage Assessment Guide*, May 2020, pp. 63-64, https://www.fema.gov/sites/default/files/2020-07/fema_preliminary-disaster-assessment_guide.pdf.

[32] See CRS Report R45819, *The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions*, coordinated by Elizabeth M. Webster and Bruce R. Lindsay.

[33] FEMA, "Notice: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," notice of proposed rulemaking, 85 *Federal Register* 80719, December 14, 2020 (hereinafter FEMA, "Proposed Rule: Cost of Assistance Estimates"), https://www.federalregister.gov/documents/2020/12/14/2020-27094/cost-of-assistance-estimates-in-the-disaster-declaration-process-for-the-public-assistance-program; FEMA, *Disaster Recovery Reform Act (DRRA): Annual Report*, October 2019, p. 7, https://www.fema.gov/media-library/assets/documents/184634.

local fiscal capacity to respond and recover.[34] If promulgated, the new rule would shift the costs of disasters that do not receive declarations to hazard-stricken states, tribes, territories, and local governments (see "Cost of PA Program" and "Strained Federal, State, and Local Workforce Capacity").[35]

PA Recipients and Applicants

If PA is authorized pursuant to a Stafford Act declaration, the state, tribe, or territory receiving the declaration becomes the PA primary grant *Recipient* (see **Figure 3**).[36] FEMA and the Recipient execute a FEMA-State/Tribal/Territory Agreement (hereinafter FEMA-State Agreement), as appropriate.[37] FEMA-State Agreements detail the understandings, terms, and commitments under which Stafford Act assistance, including PA, is to be provided.[38] The incident period and the PA cost share are among these terms. To receive PA for permanent work, Recipients must additionally have a FEMA-approved hazard mitigation plan in place.[39]

Once the agreement is established, the Recipient administers PA awards for counties that are authorized to receive assistance under the relevant Stafford Act declarations.[40] SLTTs as well as eligible nonprofits may apply for funding for specific projects as *Applicants* (see **Figure 3**). FEMA obligates funds for approved projects to the Recipient, which then reimburses Applicants for approved costs of completed work (for more information, see "Public Assistance Funding Procedures").

[34] GAO, Federal Disaster Assistance: Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO-12-838, September 2012, https://www.gao.gov/products/GAO-12-838.

[35] See CRS Insight IN11534, *Authorizing Stafford Act Public Assistance*, by Erica A. Lee.

[36] 44 C.F.R. §§206.201(m), 202.202(b).

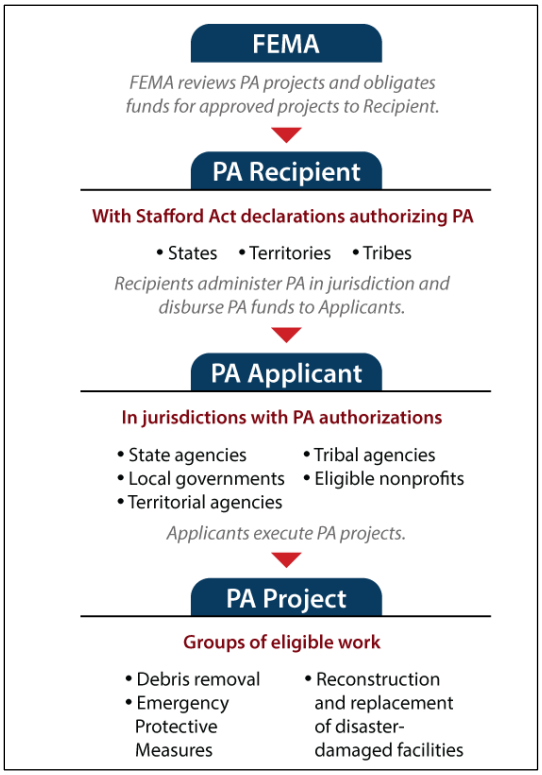
[37] 44 C.F.R. §206.44(a).

[38] 44 C.F.R. §206.44(a)-(b).

[39] 44 C.F.R. §206.226(b); for more information, see FEMA, "Hazard Mitigation Planning," https://www.fema.gov/emergency-managers/risk-management/hazard-mitigation-planning.

[40] 44 C.F.R. §206.202. FEMA outlines the requirements of Recipient administration and planning in FEMA, *PAPPG 2020*, pp. 26-28.

Figure 3. Structure of FEMA Public Assistance Program Administration



Source: CRS interpretation of 44 C.F.R. §§206.200-206.209.

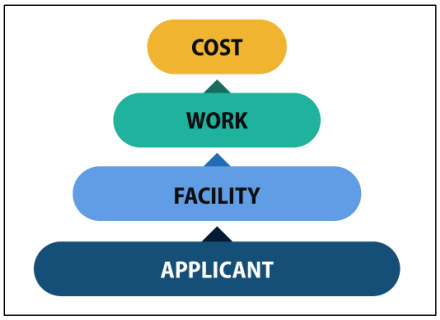
Eligibility

Eligibility is a critical element of the PA Program. Because PA funding is not limited for a given incident, entity, or project once it is authorized, eligibility is often the primary constraint on PA spending.[41] Even after PA is authorized for a particular county, municipality, or parish in the presidential Stafford Act declaration or amendment, PA eligibility must be established for each project.

The Stafford Act, federal regulations, and FEMA policy restrict eligibility for PA by four primary criteria: Applicant, facilities, work, and costs. FEMA treats these criteria as an "eligibility pyramid," as the eligibility of each tier depends on the tier below (see **Figure 4**). For example, only facilities legally owned or operated by eligible Applicants may receive PA. To receive PA funding, all four tiers of the pyramid must be met. These eligibility tiers are detailed in the following four sections.

[41] FEMA occasionally releases disaster-specific guidance detailing specific costs or work that may be eligible for PA in the case of unusual or catastrophic disasters; for example, the COVID-19 pandemic or Hurricane María recovery in Puerto Rico.

Figure 4. FEMA's PA Program Eligibility Pyramid



Source: CRS interpretation of FEMA, *Public Assistance Program and Policy Guide,* v. 4, effective June 1, 2020, p. 38.

Applicants

The Stafford Act limits entities who may receive PA to SLTTs as well as certain private nonprofits. Eligible nonprofits are those that perform services often or otherwise performed by governmental bodies, defined as *critical services*[42] or *non-critical*, *"essential" services*[43] available to the general public. Nonprofits providing critical services include educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities.[44] Nonprofits providing non-critical but essential services include community centers, libraries, homeless shelters, food banks, broadcasting facilities, houses of worship, senior citizen centers, and rehabilitation facilities.[45]

For-profit businesses are ineligible for PA. However, eligible Applicants may contract for-profit entities to perform PA-eligible work and receive reimbursement through the PA Program for the costs of the contract.[46] For example, a city eligible for PA debris removal may contract a landscaping company to remove fallen trees from city-owned property. The city could then pay the costs of the contract, and submit those costs to FEMA for reimbursement on a cost-share basis.

Facility

The Stafford Act limits the use of PA for repair and restoration to facilities owned or legally maintained by eligible Applicants.[47] Facilities owned or legally maintained by private non-profits

[42] See 42 U.S.C. §5122(11)(A), Section 102(11)(A) of the Stafford Act, and 44 C.F.R. §206.221(e). FEMA provides a full discussion on the eligibility of private non-profit organizations in FEMA, *PAPPG 2020*, pp. 43-47.

[43] See 42 U.S.C. §5122(11)(B), Section 102(11)(B) of the Stafford Act, and 44 C.F.R. §206.221(e)(7). See also FEMA, *PAPPG 2020*, pp. 43-47. Section 20604 of the Bipartisan Budget Act of 2018 (P.L. 115-123) changed eligibility for houses of worship under the Stafford Act. Per 42 U.S.C. §5122(11)(B), "[n]o house of worship may be excluded from this definition because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice."

[44] FEMA, *PAPPG 2020*, p. 12.

[45] FEMA, *PAPPG 2020*, p. 13.

[46] FEMA, *PAPPG 2020*, pp. 30-33. FEMA released a memorandum for COVID-19 procurement. FEMA, "Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19," memorandum, March 17, 2020, https://www.fema.gov/media-library-data/1584457999950-7186ffa29ace3e6faf2ca2f764357013/Procurement_Under_EE_Circumstances_Memo_final_508AB.pdf. See also FEMA, "Procurement Under Grants: Under Emergency or Exigent Circumstances," fact sheet, March 20, 2020, https://www.fema.gov/news-release/2020/03/20/procurement-under-grants-under-exigent-or-emergency-circumstances.

[47] Stafford Act Section 406(a)(1); 42 U.S.C.§5172(a)(2). See also 44 C.F.R. §206.223(a)(1)-(2).

must provide a *critical service* (including power, water, sewer, wastewater, communications, education, and emergency medical care, including those operated by religious organizations) in order to be eligible.[48]

FEMA does not provide PA for permanent work for federal facilities, or for the reconstruction of facilities whose repair falls under a specific federal authority—even if the other federal authority does not ultimately fund the necessary repairs.[49] For example, the reconstruction of certain flood control works may fall under the authority of the U.S. Army Corps of Engineers (USACE) or the Department of Agriculture's Natural Resources Conservation Service (NRCS), and thus would be ineligible for PA.[50] Exceptions may be granted if the federal agency has formally designated an eligible Applicant as the entity legally responsible for a facility.[51]

Work

The Stafford Act limits the provision of PA to work required as a result of the declared incident and located within a designated area of a major disaster or emergency (excepting emergency sheltering and evacuation).[52] FEMA organizes work eligible for reimbursement into three broad types and eight specific categories that may be individually authorized in a declaration:

- Emergency Work
  - Category A—Debris Removal
  - Category B—Emergency Protective Measures
- Permanent Work
  - Category C—Roads and Bridges
  - Category D—Water Control Facilities
  - Category E—Buildings and Equipment
  - Category F—Utilities
  - Category G—Parks, Recreational, Other
- Management
  - Category Z—Management Costs

Additionally, work must be the "legal responsibility" of an eligible Applicant in order to qualify. In practice, FEMA generally considers SLTTs to have legal responsibility for PA emergency work.[53] FEMA vests facility owners with legal responsibility for permanent work.[54]

[48] Stafford Act Sections 406(a)(3)(A)(i) and 406(a)(3)(B)-(C); 42 U.S.C. §5172(a)(3)(A)(i) and 42 U.S.C. §§5172(a)(3)(B)-(C).

[49] 44 C.F.R. §206.226(a); FEMA, *PAPPG 2020*, pp. 53-54. Stafford Act Section 405 does enable the President to authorize any federal agency to repair federal facilities damaged or destroyed by a major disaster, but this statute is not included in the PA program, and Recipients may not receive reimbursement for these projects. 42 U.S.C. §5171(a)-(b).

[50] FEMA, *PAPPG 2020*, pp. 171, 268-270.

[51] FEMA, *PAPPG 2020*, pp. 53-54.

[52] 44 C.F.R. §206.223(a)(3).

[53] Exceptions exist. For example, FEMA has in certain cases determined that medical or custodial care facilities are eligible for emergency work. FEMA, "Emergency Medical Care," https://www.fema.gov/fact-sheet/emergency-medical-care.

[54] 44 C.F.R. §206.223(b).

Finally, all PA projects must comply with all applicable statutes, executive orders, regulations, and policies. Many statutes, executive orders, and regulations establish requirements to protect the environment as well as historic and archaeologic resources. FEMA reviews PA projects to ensure compliance with applicable environmental and historic preservation requirements.[55] Applicants must also comply with federal procurement requirements.[56]

PA Emergency Work

PA emergency work may be authorized under an emergency or major disaster declaration. It includes efforts undertaken to save lives; protect property, public health, and safety; and reduce or avert the threat of a catastrophe. These activities are grouped into two major categories:

Debris Removal (Category A)—provides direct assistance and reimbursement for the costs of removing debris and wreckage from public and, in more limited cases, privately-owned property, when FEMA determines such work is in the public interest.[57]

Emergency Protective Measures (Category B)—provides assistance for work undertaken to save lives and protect property. Emergency protective measures are arguably the broadest category of work under FEMA's PA Program. Emergency protective measures may include activities ranging from prepositioning resources before a hazard strikes, to search-and-rescue in the immediate aftermath of an incident, to the construction of temporary facilities to undertake emergency medical care, sheltering, food provision, and other essential services for months after the threat has passed.[58]

Direct Federal Assistance

When PA Applicants do not have the capacity to perform eligible work under the PA Program, FEMA may provide direct assistance (referred to as Direct Federal Assistance or DFA).[59] In these cases, FEMA may task FEMA personnel or other federal agencies with performing work on behalf of the Applicant. FEMA may provide supplies, personnel, and facilities for response activities. The Stafford Act authorizes DFA only for PA emergency work and Individual Assistance, not for PA Permanent Work.[60] DFA is subject to the same cost-share requirements as other forms of PA.[61] FEMA tasks other agencies including the U.S. Department of Defense, and U.S. Department of Agriculture, and the Army Corps of Engineers (USACE) to perform Direct Federal Assistance in directives called mission assignments.[62] Recent examples include mission assignments for the USACE to support efforts to remove 450,000 cubic yards of debris following tornadoes that struck Tennessee in March 2020.[63]

[55] FEMA, *PAPPG 2020*, pp. 54-55, 221-226.

[56] FEMA, *PAPPG 2020*, pp. 76-85.

[57] Authorized in Stafford Act Sections 403, 407, 428, and 502; 42 U.S.C. §§5170a, 5170b, 5173, 5189f, 5192. See also 44 C.F.R. §206.208. For a non-exclusive list of eligible activities, see FEMA, *PAPPG 2020*, pp. 110-111; a detailed discussion of eligible costs may be found at pp. 111-137.

[58] Authorized in Stafford Act Sections 402, 403, 418, 419, 502; 42 U.S.C. §§5170a, 5170b, 5185-86, 5192. See also 44 C.F.R. §206.208. For a non-exclusive list of eligible activities, see FEMA, *PAPPG 2020*, pp. 110-111; a detailed discussion of eligible costs may be found at pp. 111-137.

[59] Authorized in Stafford Act Section 402, 418, 419, 502; 42 U.S.C. §§5170a, 5185-86, 5192. See also 44 C.F.R. §206.208.

[60] FEMA, "FEMA POLICY: Mission Assignments," FEMA Policy #104-010-2, p. 9, https://www.fema.gov/sites/default/files/2020-04/MA_Policy_aug172018.pdf.

[61] Ibid., pp. 2-3.

[62] 44 C.F.R. §206.208(c)(1).

[63] See CRS Insight IN11392, *COVID-19 Alternate Care Sites (ACSs): Role and Activities of the U.S. Army Corps of Engineers*, by Nicole T. Carter and Hannah Fischer; Lee Roberts, USACE, "Debris team wrapping up FEMA technical support mission in Middle Tennessee," April 23, 2020, https://www.usace.army.mil/Media/News-Archive/Story-

PA Permanent Work

Permanent Work may only be authorized under a major disaster declaration. PA permanent work provides reimbursement for approved costs to repair, restore, reconstruct, or replace the following types of eligible facilities damaged in a declared major disaster:

- **Roads and Bridges** (Category C)—except federal aid roads;
- **Water Control Facilities** (Category D)—including dams and levees that are not under the authority of other federal agencies;
- **Buildings and Equipment** (Category E)—including eligible building contents;
- **Utilities** (Category F)—including gas, power, water, communication, and sewage facilities; and
- **Parks, Recreational, Other** (Category G)—including railways, beaches, piers, ports, and harbors.[64]

Both the Stafford Act and federal regulations place additional restrictions on PA permanent work for nonprofits. Nonprofit Applicants must first apply for a loan from the Small Business Administration (SBA) disaster loan program in order to be eligible for PA permanent work. Only reconstruction costs not covered by an SBA loan are eligible for PA.[65]

PA Permanent Work Beyond Repair and Reconstruction

In certain cases, Applicants may receive PA to pursue projects beyond facility repair and reconstruction. For instances, Applicants may determine that facilities require replacement or relocation. These projects are subject to particular requirements.

Facility Replacement: FEMA may provide PA for the costs of replacement if the costs of repair or reconstruction are estimated to exceed 50% of the estimated costs of replacement.[66]

Facility Relocation: FEMA may provide PA for relocation if relocation complies with other applicable regulations, the original location is subject to repetitive losses (e.g., multiple floods), and the newly proposed project is cost-effective.[67] FEMA may utilize its Benefit-Cost Analysis process to determine cost effectiveness.[68]

The Stafford Act also authorizes PA for specific types of projects when Applicants determine "that the public welfare would not best be served" by repairing, restoring, reconstructing, or replacing the original disaster-damaged facility.[69] In these cases, Applicants may receive capped PA awards for Improved Projects or Alternate Projects (for more information see **Appendix B**).

Improved Projects: Applicants may seek to make improvements to a damaged facility that exceed the requirements of eligible codes or standards. A project that restores the pre-disaster function of a facility and incorporates improvements or changes to the pre-disaster design is an Improved Project.[70] Improved projects receive capped awards.[71] For example, Joplin Schools in Missouri decided to relocate and improve upon Old South Middle School instead of simply rebuilding it through exterior grounds project after a tornado destroyed the

Article-View/Article/2162830/debris-team-wrapping-up-fema-technical-support-mission-in-middle-tennessee/.

[64] Public and nonprofit facilities are defined in the Stafford Act Section 102(10)-(11) and 44 C.F.R. §§206.221(e) and (h).

[65] Stafford Act Section 406(a)(3)(A)(ii); 42 U.S.C. §5172(a)(A)(3)(ii); 44 C.F.R. §206.226(c)(2).

[66] 44 C.F.R. §206.226(f); FEMA, *PAPPG 2020*, pp. 156-160.

[67] FEMA, *PAPPG 2020*, pp. 160-161.

[68] See FEMA, "Benefit-Cost Analysis," https://www.fema.gov/grants/guidance-tools/benefit-cost-analysis.

[69] Section 406(c) of the Stafford Act, 42 U.S.C. §5172(c); 44 C.F.R. §206.203(d)(2).

[70] FEMA, *PAPPG 2020*, p. 163.

[71] Section 406(c) of the Stafford Act, 42 U.S.C. §5172(c); 44 C.F.R. §206.203(d)(2).

school in 2011.[72] Joplin Schools received an award for the new, improved facility (an improved project) that was capped on the basis of the estimated costs to replace Old South Middle School.

Alternate Projects: Alternate projects are projects that do not restore the function of the disaster-damaged facility.[73] For example, following severe storms in Milwaukee, WI, the city determined that the public would be better served by reconfiguring the water distribution system rather than repairing a disaster-damaged pumping station; FEMA approved the alternate project and obligated funds equivalent to the estimates to restore the pumping station to predisaster use towards the alternate project.[74]

Management Costs

FEMA provides PA for eligible management costs that Recipients and Applicants incur while managing PA awards. These costs may include the costs of conducting PDAs, hosting PA Program meetings, site inspections, preparing project worksheets, and managing PA grant program documentation.[75] Under the Stafford Act, FEMA may provide funding for up to 7% of the total PA awarded within a jurisdiction to Recipients for the actual eligible costs they incur for management of all related PA grants.[76] Additionally, FEMA may provide funding for up to 5% of the total PA awarded to an Applicant for actual eligible costs incurred for management of the PA projects they complete.[77] FEMA categorizes these awards as "Category Z."

Costs

Both the Stafford Act and regulations limit the provision of PA to specific costs. Generally, PA may not reimburse costs funded by other means, including other federal agencies or private insurance. The Stafford Act prohibits such as a "duplication of benefits."[78] However, the enactment of the Disaster Recovery Reform Act (DRRA; P.L. 115-254) in 2018 granted the President the authority to waive this requirement if the waiver is in the public interest and does not result in waste, fraud or abuse.[79]

Costs must also meet the definition of "reasonable" established in federal regulations: "a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the

[72] FEMA Public Assistance Appeals Database, "Improved Project—Joplin Schools," signed July 24, 2018, https://www.fema.gov/appeal/improved-project-5.

[73] 44 C.F.R. §206.203(d)(2).

[74] Department of Homeland Security Office of Inspector General (DHS OIG), *FEMA Public Assistance Grant Program Funds Awarded to City of Milwaukee, Wisconsin*, DD-12-14, June 2012, pp. 1-2, https://www.oig.dhs.gov/sites/default/files/assets/GrantReports/OIG_DD-12-14_Jun12.pdf.

[75] FEMA, "Public Assistance Management Costs (Interim), FEMA Recovery Policy FP 104-11-12," November 14, 2018, p. 4, https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf.

[76] Ibid., pp. 3-4; Section 324 of the Stafford Act; 42 U.S.C. §5165b.

[77] For more information, see FEMA, "Public Assistance Management Costs (Interim): FEMA Recovery Policy FP 104-11-2," November 11, 2018, https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf; FEMA, "Public Assistance Management Costs SOP," February 11, 2019, https://www.fema.gov/sites/default/files/2020-07/pa_mgmt_costs_sop_final.pdf.

[78] Section 312 of the Stafford Act; 42 U.S.C. §5155 and 44 C.F.R. §206.250(c). For more information, see CRS Report R44553, *SBA and CDBG-DR Duplication of Benefits in the Administration of Disaster Assistance: Background, Policy Issues, and Options for Congress*, by Bruce R. Lindsay and Eugene Boyd.

[79] §1210 of DRRA, P.L. 115-254, as it amends Section 312 of the Stafford Act, 42 U.S.C. §5155. For more information, see CRS Report R45819, *The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions*, coordinated by Elizabeth M. Webster and Bruce R. Lindsay, pp. 34-37.

cost."[80] FEMA guidance details how the Applicant, the Recipient, and FEMA may assess cost reasonability, including analysis of historical prices and pricing constraints imposed by exigent circumstances.[81]

PA Requirements and Procedures

Cost-Share

The Stafford Act provides assistance on a federalist model that supplements state, local, tribal, and territorial resources on the basis of a cost share. The Stafford Act authorizes FEMA to reimburse at least 75% of the eligible costs of specific types of disaster response and recovery work undertaken by PA applicants.[82] The remaining 25% cost share is the responsibility of the Recipient, though some pass it on to Applicants. State approaches to meeting PA cost shares vary. For example, Pennsylvania pays almost all PA nonfederal cost shares, whereas Oregon requires Applicants to cover the cost share.[83]

Federal regulations describe the means through which Recipients may meet the nonfederal cost share. Regulations prohibit Recipients from using other federal funds to meet the nonfederal cost share, unless those funds are statutorily authorized to meet federal cost-share requirements.[84] The Department of Housing and Urban Development's Community Development Block Grant, for example, is statutorily authorized to meet federal cost-share requirements for other federal programs.[85] Recipients may also apply the value of donated goods, resources, and labor to fulfill the nonfederal cost share.[86]

Several hundred declarations and declaration amendments have included cost-share increases since the enactment of the Stafford Act in 1988.[87] Additionally, Congress has acted to increase the federal cost share statutorily for certain severe incidents.[88]

The Stafford Act authorizes the President to increase the federal cost share when warranted. FEMA may recommend that the President increase the federal cost share in extraordinary

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[80] 2 C.F.R. §200.404; OMB Circular A-87.

[81] FEMA, "Public Assistance: Reasonable Cost Estimation," Job Aid, October 13, 2018, https://www.fema.gov/media-library-data/1539879525279-d00ae1c43f9765c5a4b415e1a31202c5/PA_Reasonable_Cost_Evaluation_Job_Aid_508_FINAL_10-16-2018.pdf.

[82] See, for example, Stafford Act Section 503(a), 42 U.S.C. §5193(a), which states "[t]he Federal share for assistance provided under this subchapter [Subchapter V—Emergency Assistance Programs] shall be equal to not less than 75 percent of the eligible costs"; and 42 U.S.C. §5170b(b), which states "[t]he Federal share of assistance under this section [Section 403—Essential Assistance] shall be not less than 75 percent of the eligible cost of such assistance."

[83] Pew Charitable Trust, *What We Don't Know About State Spending on Natural Disasters Could Cost Us*, June 2018, pp. 13-14; National Governor's Association, Memorandum on Cost Share Considerations for FEMA Public Assistance Grants, May 20, 2020, https://www.nga.org/wp-content/uploads/2020/04/NGA-Memo_Cost-Share_Final.pdf.

[84] 2 C.F.R. §200.306(b)(5). The Department of Housing and Urban Development's Community Development Block Grant, for example, is statutorily authorized to meet federal cost-share requirements.

[85] For more information, see CRS Report R46475, *The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues*, by Michael H. Cecire and Joseph V. Jaroscak.

[86] 2 C.F.R. §200.306(e)-(j).

[87] For more information, see CRS Report R41101, *FEMA Disaster Cost-Shares: Evolution and Analysis*, by Natalie Keegan and Elizabeth M. Webster.

[88] One example of such legislation is Section 309 of Division A of P.L. 116-6, which raised the federal cost share to 90% for Public Assistance emergency work for the wildfires of 2018.

circumstances.[89] According to federal regulations, FEMA recommends an increase in the federal cost share to up to 90% when the estimated cost of PA exceeds an established threshold for the state, tribe, or territory (in FY2021, $151 per capita).[90] FEMA may also take into account other disasters in the affected area during the preceding twelve months.[91] In particularly severe situations, FEMA may recommend an increase in the cost share of PA emergency work to 100% for a limited period of time, irrespective of the estimated damages.[92] Such adjustments sometimes result in differing cost shares for permanent and emergency work.

The Stafford Act also authorizes the President to increase the federal cost share for permanent work up to 85% when Recipients undertake a range of mitigation measures.[93] Measures may include the adoption and enforcement of the most recent building codes and participation in the National Flood Insurance Program's (NFIP's) Community Rating System for flood-abatement measures.[94]

Finally, the Stafford Act authorizes FEMA to advance the nonfederal cost share to Applicants or Recipients if warranted due to concurrent major disasters or particularly overwhelming incidents.[95]

Insurance Requirements

The Stafford Act requires some Applicants to carry insurance in order to "protect themselves … [and] … supplement or replace government assistance."[96] For example, Applicants that receive PA to repair or replace disaster-damaged facilities must obtain and maintain insurance "of such type and extent" necessary to protect against future loss to the property.[97] Applicants in identified flood hazard zones must secure insurance through the NFIP[98] or other insurance as required by the Applicant's state insurance commissioner.[99] The Stafford Act also limits PA for uninsured, flood-damaged facilities in violation of the National Flood Insurance Act. Such properties generally may receive PA only for damages that exceed estimated insurance proceeds had the

[89] 44 C.F.R. §206.47. For cost-share adjustments for tribes, see 42 U.S.C. §5170(c), and FEMA, *Tribal Declarations Pilot Guidance*, January 2017, p. 38-39, https://www.fema.gov/media-library-data/1523033284358-20b86875d12843441a521a6141c15099/Pilot_Guidance.pdf.

[90] 44 C.F.R. §206.47(b). Per federal regulations, the threshold is annually adjusted. For disasters declared between January 1, 2021, and December 31, 2021, the threshold is $151. FEMA, Department of Homeland Security (DHS), "Notice of Adjustment of Statewide per Capita Indicator for Recommending a Cost Share Adjustment," Advisory, distributed January 28, 2021.

[91] 44 C.F.R. §206.47(c).

[92] 44 C.F.R. §206.47(d).

[93] Stafford Act 406(b)(3)(A); 42 U.S.C. §5172(b)(3)(A).

[94] Stafford Act 406(b)(3)(A); 42 U.S.C. §5172(b)(3)(A). See also "Community Rating System" in CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Baird Webel.

[95] Stafford Act Section 319; 42 U.S.C. §5162.

[96] Stafford Act Section 101(b)(4); 42 U.S.C. §5121(b)(4).

[97] Stafford Act Section 311(a)-(b); 42 U.S.C. §5154(a)-(b). See also 44 C.F.R. §206.250(a)-(b), §206.252(d), and §206.253(b)(1).

[98] 44 C.F.R. §206.250(a); 44 C.F.R. §206.252.

[99] Stafford Act Section 311(a)(2); 42 U.S.C. §5154(a)(2).

facility been properly covered.[100] FEMA details insurance requirements in regulations and guidance.[101]

Public Assistance Funding Procedures

PA projects are reimbursed according to procedures that vary according to the size and type of project. In all cases, PA funds pass from FEMA to the Recipient to the Applicant. For this reason, the Recipient is sometimes referred to as a "pass-through entity."[102]

FEMA obligates PA awards to the Recipient based on either the actual costs of completed work, or a project estimate if the work has yet to be completed.[103] A disaster-stricken county may have already incurred and paid for the costs of debris removal by the time FEMA approves the project, whereas reconstruction projects may only be in the early phases of damage and repair estimation when a project is approved. After FEMA obligates funds, the Recipient then disburses funds to the Applicant for approved costs (for more information see **Appendix B**).

Applicants may receive two primary types of awards—awards based on actual costs (hereinafter standard procedures, also referred to as "406 procedures") and capped awards (which include Section 428 Alternative Procedures; hereinafter "Alternative Procedures").

Larger PA projects (those that exceed $132,800 in FY2021) are funded on a reimbursement basis under either standard or Alternative Procedures.[104] For this reason, Applicants generally need nonfederal funds to pay for eligible costs before they may request and receive reimbursement.[105] In certain cases, the requirement that Applicants cover initial costs before receiving reimbursement has burdened some Applicants, particularly those facing catastrophic losses (as reported, for example, for Applicants in New Orleans following Hurricane Katrina and in Puerto Rico following the 2017 hurricanes).[106]

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[100] Stafford Act Section 406(d); 42 U.S.C. §5172(d) and 44 C.F.R. §206.250(d) and §206.252(a)-(b). For additional information, see CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Baird Webel.

[101] 44 C.F.R. §§206.250-206.253. FEMA, *Public Assistance Policy On Insurance*, FP 206-086-1, June 29, 2015, https://www.fema.gov/sites/default/files/2020-05/FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf.

[102] See, for example, FEMA, *PAPPG 2020*, p. 21.

[103] FEMA, *PAPPG 2020*, pp. 185-187, 190-191; 44 C.F.R. §44 206.205(b). Awards over $1 million may be obligated according to Strategic Funds Management, under which FEMA will obligate funds as needed based on the project completion schedule. FEMA, *Strategic Funds Management—Implementation Procedures for the Public Assistance Program*, FEMA SOP 9570.24, December 2012, https://www.fema.gov/sites/default/files/2020-07/ fema_9570.24_startegic-funds-mgmt_SOP_12-21-2012.pdf.

[104] 44 C.F.R. §206.205(a); and email from FEMA Congressional Affairs staff, September 10, 2020. Recipients may disburse funds to Applicants in advance for the minimum amounts needs and timed with the Applicants immediate cash requirements, per 44 C.F.R. §200.305. States may place different rules on requests for advance funds. See, for example, Texas Division of Emergency Management, "State of Texas Administrative Plan for Public Assistance," 2018, pp. 27-28, https://tdem.texas.gov/wp-content/uploads/2019/08/PA-State-Admin-2018-Texas-State-Administrative-Plan-FINAL.pdf.

[105] FEMA Office of Legislative and Congressional Affairs, email to CRS, September 10, 2020.

[106] See Former Chairman Mary Landrieu, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Stafford Act Reform: Shaper Tools for A Smarter Recovery*, 111th Cong., 2nd sess., S.Hrg. 111-895, May 12, 2010, pp. 29 (hereinafter HSGAC, *Stafford Act Reform*); Government of Puerto Rico, 2020 Fiscal Plan for Puerto Rico, As Submitted to the Financial Oversight and Management Board for Puerto Rico on May 3, 2020, pp. 28-29, https://www.aafaf.pr.gov/ assets/2020-fiscal-plan-may-3-2020.pdf (hereinafter Government of Puerto Rico, *2020 Fiscal Plan*).

PA Standard Procedures—Awards for Actual Costs

Most PA projects to date have been processed under standard reimbursement procedures. Under standard procedures, Applicants receive reimbursements for large projects (set at $132,800 in FY2021) on the basis of the actual costs of approved work.[107] For smaller projects, Applicants may receive funds as soon as a project is obligated. For larger projects, Applicants pay for initial costs, and then receive reimbursement based on the applicable cost share (for example, for 75% of the costs).

During the course of a large project, the Applicant may encounter delays, cost overruns, or the need to modify the scope of work.[108] For any of these reasons, an Applicant may determine that the project's scope of work must substantively change after the project has been approved and obligated.[109] For example, the City of Columbia, SC identified the need to change the scope of work of an obligated project when the City discovered previously undetected damage to its Metro Wastewater Treatment Plant following severe storms in October 2015.[110] FEMA regulations permit Applicants completing projects under standard procedures to change the scope of work to include new costs if the costs are eligible and necessary to complete the project, and if FEMA gives prior approval.[111] In such a case, the Applicant submits a description and justification of the change in the project's scope of work (including any cost overruns) for the Recipient and FEMA's review.[112] If approved, FEMA obligates the additional funds to the Recipient.

The use of standard procedures may provide certain benefits. The allowance of project modifications and reimbursement on the basis of actual costs (including overruns) may mitigate the Applicant's financial risk. The use of standard procedures also affords FEMA the opportunity to conduct timely oversight when reviewing project changes and implementation.

The use of standard procedures may also present challenges. Each significant change in the scope of work requires FEMA approval. FEMA, GAO, and OIG have concluded that standard procedures demand significant federal time and resources due to the complexity of the process for project review, revision, and reimbursement.[113] Additionally, the use of standard procedures may not incentivize Applicants to control costs, as cost overruns may be eligible for additional assistance.

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[107] FEMA, "Per Capita Impact Indicator and Project Thresholds," https://www.fema.gov/public-assistance-indicator-and-project-thresholds.

[108] FEMA delimits the scope of work as follows: "For Emergency Work, the SOW includes work required to address immediate threats and to remove debris and must include quantitative information. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and hazard mitigation description and dimensions." FEMA, *PAPPG 2020*, p. 183.

[109] 44 C.F.R. §206.204(e).

[110] FEMA Public Assistance Appeals Database, FEMA Appeal Brief PW# 873, signed September 16, 2020, https://www.fema.gov/appeal/change-scope-work-improved-project-codes-and-standards.

[111] 44 C.F.R. §206.204(e).

[112] 44 C.F.R. §206.204(e)(2).

[113] GAO, *Disaster Assistance: Opportunities to Enhance Implementation of the Redesigned Public Assistance Grant Program*, November 2017, GAO-18-30, pp. 2-3 (hereinafter GAO, *PA Redesign*); DHS OIG, *Management of FEMA Public Assistance Grant Funds Awarded to the Sewerage and Water Board of New Orleans Related to Hurricanes Katrina, Isaac, and Gustav*, OIG-20-21, March 27, 2020, pp. 20-21; FEMA Administrator Brock Long, pp. 6-7, Governors Steve Bullock and Brian Sandoval on behalf of the National Governor's Association (NGA), submitted testimony, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *FEMA: Prioritizing a Culture of Preparedness*, 115th Cong., 2nd sess., April 11, 2018, S.Hrg. 115-442, pp. 6-7 (hereinafter HSGAC, *Prioritizing Preparedness*).

PA Alternative Procedures and Capped Awards

In contrast to awards made for actual costs, Applicants may receive capped awards for certain projects. FEMA provides capped awards under Alternative Procedures authorized under Stafford Act Section 428 (hereinafter Alternative Procedures) as well as for improved or alternate projects (for more information see **Appendix B**).

Enacted in the wake of Hurricane Sandy, SRIA authorized Alternative Procedures with the expressed aim to reduce costs, expedite delivery of assistance, reward timely and adept completion of PA projects, and increase the PA Program's flexibility.[114] The 113th Congress authorized Alternative Procedures as a pilot program and allowed FEMA to waive the standard rulemaking process in order to expeditiously implement the new procedures.[115] Absent rulemaking, FEMA has issued several iterations of guidance on the Alternative Procedures Pilot Program (see **Appendix C**).[116] As of March 2021, the program continues as a pilot, though FEMA guidance treats Alternative Procedures "as the first option considered for all large permanent work projects in order to ensure the ability of Applicants to drive their own recovery."[117]

As of August 21, 2020, Applicants had completed projects under Alternative Procedures in 54 states and territories, according to FEMA data. This accounted for approximately 28% of obligated PA funds since the implementation of Alternative Procedures in 2013.[118]

Alternative Procedures include several modifications to standard procedures for large permanent work projects (see **Table 2**). Most notably, awards under Alternative Procedures are capped based on up-front and mutually agreed-to cost estimates of the work to be done. Applicants may use any excess funds for approved purposes (for example, mitigation) if estimates exceed the actual costs of a completed project. However, Applicants are responsible for all costs that exceed the agreed-upon estimates (see **Figure 5**). This change transfers the risk of cost overruns or project delays entirely to the Applicant. Under standard procedures, FEMA and the Applicant or Recipient share the risk, according to the PA cost share.

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[114] The Sandy Recovery Improvement Act (SRIA), P.L. 113-2; Stafford Act Section 428. The Public Assistance Program Alternative Procedures are codified at Section 1102 of SRIA; 42 U.S.C. §5189f. The statute reads

> Goals of Procedures—The alternative procedures adopted under subsection (a) shall further the goals of—(1) reducing the costs to the Federal Government of providing such assistance; (2) increasing flexibility in the administration of such assistance; (3) expediting the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and (4) providing financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.

[115] Section 1102 of SRIA, Division B of P.L. 113-2, as codified at 42 U.S.C. §5189f(f), Section 428(f) of the Stafford Act.

[116] As of November 2020, FEMA has published five pilot guides for Public Assistance Alternative Procedures for Permanent Work, and eight guides for Public Assistance Alternative Procedures Debris Removal, in addition to guidance on administrative costs and jobs aids, as well as three iterations each of disaster-specific guidance for Puerto Rico's 2017 hurricane recovery, and the Virgin Islands. Archived guidance for general Alternative Procedures is available at FEMA, "Archives: Public Assistance Alternative Procedures (PAAP)," https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/public-assistance-alternative-procedures-paap-archives.

[117] FEMA, *PAPPG 2020*, p. 12.

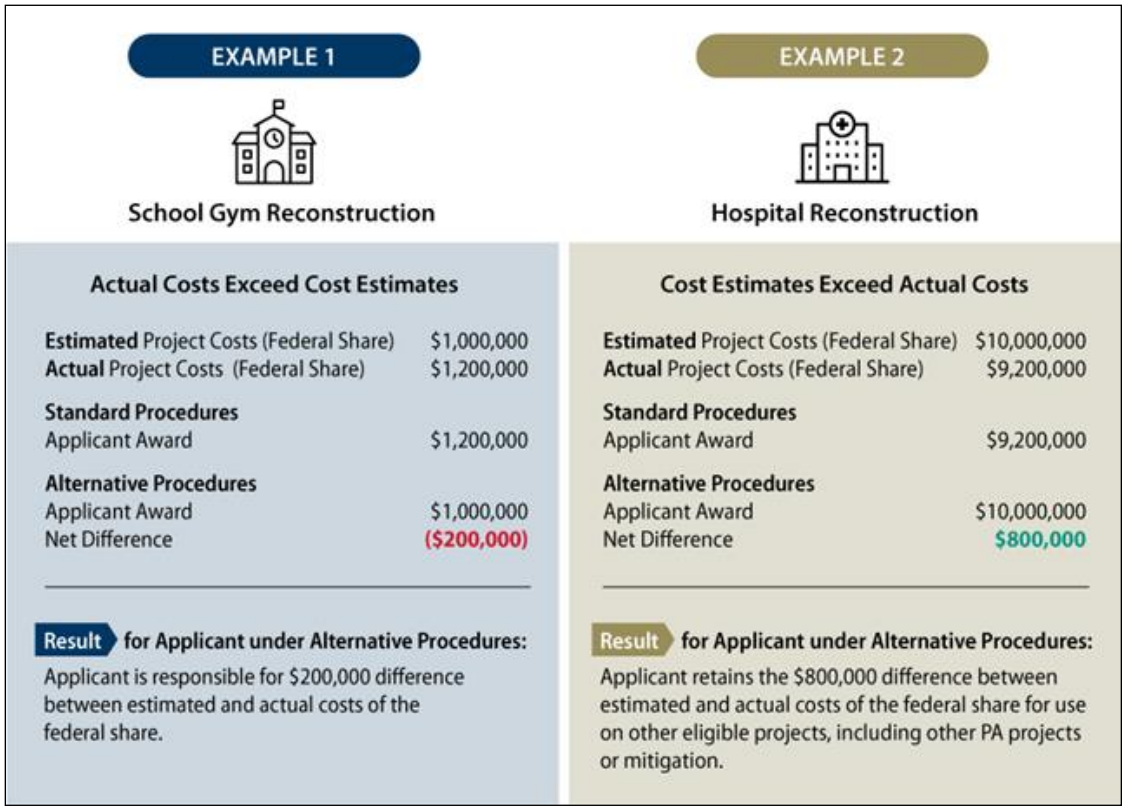
[118] CRS analysis of data provided by FEMA Office of Congressional and Legislative Affairs current through August 21, 2020.

Table 2. FEMA's Public Assistance Standard Procedures vs. Alternative Procedures

Topic	Standard Public Assistance Procedures ("406 Procedures")	Alternative Public Assistance Procedures ("428 Procedures")
Award	Awards are based on costs of actual work.	Awards are capped on the basis of estimates of the cost of eligible work agreed to by FEMA, the Recipient, and Applicants. Fixed-cost estimates may not be amended after agreement is reached, except if insurance proceeds or failure to obtain and maintain insurance alters the estimated cost of the project. Certain cost estimates are validated by a third-party expert panel.
Cost Overruns	Applicants may receive PA on a cost-share basis for eligible costs that exceed initial project estimates.	Applicants are responsible for the difference between the cost of estimated and actual work.
Excess Funds	Applicants may not access funds remaining if project estimates exceed actual project costs.	Applicants may use award funds remaining after the completion of actual work on eligible work, including mitigation and other PA projects.
Consolidated Projects	Standard procedures require Applicants to use funds for the project documented in the original scope of work.	Applicants using Alternative Procedures may consolidate funds from multiple fixed-cost PA awards across multiple facilities or projects. For example, an Applicant may use funds from a project that runs under budget to fund a project that runs over budget.
Alternate Projects (eligible projects beyond the reconstruction or replacement of disaster-damaged facility)	Prior to 2018, PA standard procedures reduced funding for alternate projects by 10%. However, the Disaster Recovery Reform Act of 2018 (P.L. 115-254) eliminated this reduction upon its enactment in October 2018.	Applicants using Alternative Procedures may complete alternate projects using funds from a fixed-cost estimate without any reduction in funding.

Sources: Stafford Act Section 428; 42 U.S.C. §4189f; 44 C.F.R. §206.204(e); FEMA, *Public Assistance Alternative Procedures for Permanent Work Pilot*, version 4, FEMA Recovery Policy FP 104-009-7, August 19, 2019, https://www.fema.gov/media-library-data/1568910139061-36ef984e91a480f99341e6836ac27ae8/PAAP_Perm_Work_Guide_V4_2019_508.pdf.

Figure 5. Funding Scenarios for Large Projects Under Alternative and Standard Public Assistance Procedures



Source: CRS analysis of Stafford Act Section 428(e)(1)(A) and (D).

Notes: Large projects are those that exceed a certain project threshold (e.g., $132,800 for FY2021). FEMA, "Per Capita Impact Indicator and Project Thresholds," https://www.fema.gov/public-assistance-indicator-and-project-thresholds.

The use of Alternative Procedures and other capped awards afford certain opportunities to Applicants and FEMA:

- Applicants have the ability to modify facilities rather than restoring a disaster-damaged facility to its predisaster use.[119]
- Applicants using Alternative Procedures do not need to track costs with the same granularity as required under standard procedures, which may reduce the grant management burdens for both Applicants and Recipients.[120]
- FEMA may be able to commit fewer resources to project oversight and review after Alternative Procedures projects are obligated, as scope of work changes are not permitted.
- FEMA may also control federal expenses by avoiding fiscal exposure to cost overruns and project delays.

[119] Predisaster use refers to the capacity and function of the facility immediately prior to the incident. For more information, see 44 C.F.R. §206.226.

[120] FEMA, *PAPPG 2020*, pp. 188-189.

- Applicants using Alternative Procedures may retain any remaining funds if estimates exceed actual costs and use for other eligible projects. This feature is not available for alternate or improved projects.[121]

These capped awards also present a number of challenges.

- As noted earlier, capped awards transfer the risk of cost overruns or project delays entirely to the Applicant (see **Figure 5**).
- GAO has found that Alternative Procedures have sometimes resulted in significant recovery delays due to the time-consuming process required to establish an agreement between FEMA, Recipients, and Applicants on project cost estimates.[122]
- These recovery delays require significant FEMA involvement.

For these reasons, Alternative Procedures may not, in practice, save federal resources and control spending as intended. These challenges are discussed in greater detail in the Alternative Procedures" section under "Congressional Considerations," below.

Building Standards

In addition to the funding mechanisms detailed above, the PA Program requires that all PA-eligible work incorporate certain minimum building standards. DRRA amended the Stafford Act to require that PA permanent work projects be reconstructed according to

> the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purposes of protecting the health, safety, and general welfare of the facility's users against disasters….[123]

FEMA guidance generally interprets this provision as a requirement for the construction of many PA projects to conform to the most recent published International Code Council standards (e.g., the International Building Code) or other standards established by national professional associations (e.g., the American Society of Civil Engineers).[124] According to this guidance, PA

[121] FEMA, *PAPPG 2020*, p. 164.

[122] Omar J. Marrero, Governor of Puerto Rico's Authorized Representative, Letter to Gene L. Dodaro, Comptroller General of the United States, January 30, 2019, in GAO, *Puerto Rico Hurricanes: Status of FEMA Funding, Oversight, and Recovery Challenges*, GAO-19-256, March 14, 2019, pp. 37-38, https://www.gao.gov/products/GAO-19-256, (hereinafter GAO, *Puerto Rico Hurricanes 2019*); GAO Representative Chris P. Currie, oral testimony, U.S. Congress, House Homeland Security Subcommittee on Emergency Preparedness, Response and Recovery, Hearing on Puerto Rico and Virgin Islands Hurricane Recovery, 116th Cong., 1st sess., July 11, 2019; GAO, *2018 Pacific Disasters: Preliminary Observations of FEMA's Disaster Response and Recovery Efforts,* GAO-20-614T, July 8, 2020, pp. 16-18 (hereinafter GAO, *2018 Pacific Disasters*).

[123] §1235(b) of DRRA, P.L. 115-254, as it amends §406(e)(1)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e)(1)(A). DRRA also amended the Stafford Act to require PA-eligible costs include estimates of replacing eligible projects under Stafford Act Section 406 "in a manner that allows the facility to meet the definition of resilient" developed pursuant to Section 406(e)(1)(A). As of January 2021, FEMA had not yet promulgated a new definition of "resilient." DRRA requires the definition to be published no later than October 2020.

[124] Appendix A of FEMA, "Consensus-Based Codes, Specifications and Standards for Public Assistance," FEMA Recovery Interim Policy FP-104-009-11 Version 2.1, December 2019, p. 9 (hereinafter FEMA, "Consensus-Based Codes 2019"), https://www.fema.gov/sites/default/files/2020-05/ .DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf. See the

reconstruction projects for roads, bridges, buildings, electric power, potable water and wastewater facilities for disasters declared on or after December 20, 2019, must be built in accordance with the most recently published hazard-resistant building codes, regardless of pre-disaster condition or design.[125] In some cases, Applicants undertaking work for certain earlier disasters may be eligible to elect to follow the same consensus-based codes.[126] Other projects (e.g., for other facilities or earlier disasters) must be completed according to local building code standards that, at the time of the disaster, were appropriate for the use of the facility, reasonable, enforced, and uniformly applied to similar facilities.[127]

Mitigation Activities

Applicants may use PA for mitigation projects whenever permanent work is authorized and if the project directly reduces the potential of future damage.[128] Typically, PA is obligated for mitigation projects only for damaged parts of a PA-eligible facility, though FEMA may consider other projects on eligible facilities.[129] Examples of mitigation projects include elevating flood-prone structures, installing new drainage facilities along roads, and constructing floodwalls. FEMA will only approve mitigation measures determined to be cost effective.[130] This criteria may be met if one of the following conditions applies:

1. the project cost does not exceed 15% of the cost of the restoration of the disaster-damaged facility (prior to any insurance reductions);[131]
2. the mitigation measure is listed in FEMA's Cost-Effective Public Hazard Mitigation Measures,[132] and the measure does not exceed 100% of the eligible repair cost of the relevant disaster-damaged facility (prior to any insurance reductions); or
3. the mitigation project appears to be cost-effective according to FEMA's Benefit-Cost analysis or comparable methodology.[133]

According to FEMA data, approximately $8.5 billion dollars have been obligated for PA mitigation projects from 1999 to August 21, 2020.[134]

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collected volumes of the International Code Council at https://codes.iccsafe.org/.

[125] FEMA, "Consensus-Based Codes 2019," p. 2. Exceptions may be granted if the use of consensus-based codes are technically infeasible, extraordinarily burdensome to the Applicant, or inappropriate (e.g., in the case of facilities listed on the National Register of Historic Places). Ibid., p. 4.

[126] FEMA, "Consensus-Based Codes 2019," p. 3.

[127] 44 C.F.R. §206.223(d); FEMA, "Consensus-Based Codes 2019," p. 4; FEMA, FAQ: "Consensus-Based Codes, Specifications and Standards for Public Assistance," February 2020, p. 5, https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-faqs.pdf.

[128] Sections 406(c)(1)(B) and 406(c)(2)(B) of the Stafford Act; 42 U.S.C. §§5172(c)(1)(B) and 5172(c)(2)(B). FEMA also funds the Pre-Disaster Mitigation Program and the Hazard Mitigation Grant Program. See CRS Insight IN11187, *Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance*, by Diane P. Horn.

[129] FEMA, *PAPPG 2020*, pp. 154-155.

[130] 44 C.F.R. §206.226(e).

[131] Cost-effectiveness for Applicants using Alternative Procedures is based on the fixed estimate to restore the damaged facility to predisaster use. See FEMA, *PAPPG 2020*, pp. 156-157.

[132] See Appendix J: Public Assistance Hazard Mitigation Measures in *PAPPG 2020*, pp. 242-246.

[133] FEMA, *PAPPG 2020*, pp. 154-155, 242-246. FEMA, "Benefit-Cost Analysis," https://www.fema.gov/grants/guidance-tools/benefit-cost-analysis.

[134] FEMA reported that due to data limitations in the FEMA PA information system, Emergency Management Mission Integrated Environment (EMMIE), mitigation project obligations are estimated based on a proportion of the project

PA Funding

PA awards and program operations are provided through the DRF. Managed by FEMA, the DRF is the primary source of funding for Stafford Act assistance.[135] DRF funding, if available, may be used for past, current, and future incidents. DRF appropriations are "no-year" funds that may be drawn for authorized purposes at any time until expended. Generally, Congress does not appropriate funds for the DRF for a specific disaster, year, or program, including Public Assistance.

In 2012, FEMA launched OpenFEMA, an online data hub that includes data on historical PA obligations.[136] The enactment of DRRA in 2018 additionally required FEMA to publish a range of data on disaster relief programs and the DRF, including obligations data, in order to promote agency accountability.[137]

The following section utilizes publicly available data from OpenFEMA as well as data provided directly to CRS from FEMA to identify trends in PA obligations. This analysis does not include obligations for the unique and ongoing COVID-19 pandemic (see **Appendix A**, "Snapshot of PA for COVID-19"). The assembled data comprise the most comprehensive available data set and shed light on the location, duration, and purpose of PA projects. However, at the time of publication, CRS cannot independently verify the data sets due to several factors, including that PA project documentation is not readily available. Additionally, CRS cannot reconcile disparities between different FEMA datasets on PA obligations.

DRF Obligations for PA

On average, Public Assistance has drawn more from the DRF than any other Stafford Act function (see **Figure 6**). PA's share of DRF obligations is more than twice that of the next largest program, Individual Assistance, when obligations for the unique and ongoing COVID-19 pandemic are excluded. Notably, the share of DRF obligations committed to PA is generally increasing (see **Figure 7**). PA accounts for an average of 48% of DRF obligations between FY2001 and FY2010, and grows to an average of 60% between FY2011 and FY2020.

costs for the overall PA project. FEMA Office of Congressional and Legislative Affairs, email to CRS, August 21, 2020.

[135] For more information about the Disaster Relief Fund and its history, see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

[136] FEMA, "OpenFEMA," https://www.fema.gov/about/reports-and-data/openfema; DHS, "Open Government Plan 3.0," 2014, https://www.dhs.gov/sites/default/files/publications/2014%20Open%20Government%20Plan%20053014_0.pdf.

[137] §1224 of DRRA, P.L. 115-254, adding a new §430 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189h.

Figure 6. Disaster RF Obligations by Category, Fiscal Years 2000-2020

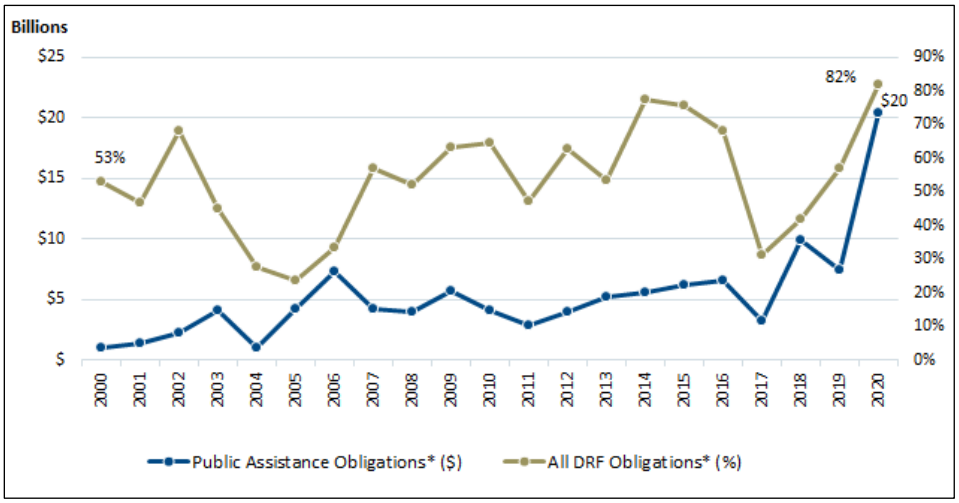
According to FEMA Data

Source: CRS analysis of FEMA data on DRF Obligations, FY2000-FY2020 provided to CRS by FEMA Office of Congressional and Legislative Affairs.

Notes: This figure reflects PA and DRF obligations less obligations for the COVID-19 pandemic in FY2020, as reported in FEMA, *Disaster Relief Fund Monthly Report,* November 6, 2020.

Figure 7. FEMA's Public Assistance Program Obligations, Fiscal Years 2000-2020

Dollars and as Percentage of all DRF Obligations, According to FEMA



Source: FEMA data on DRF Obligations, FY2000-FY2020, provided to CRS by FEMA Office of Legislative and Congressional Affairs.

Notes: This figure reflects PA and DRF obligations less obligations for the COVID-19 pandemic in FY2020, as reported in FEMA, *Disaster Relief Fund Monthly Report*, November 6, 2020. Note that PA obligations often rise in the fiscal years following a particularly severe event due in part to the pace of obligating funds for long-term reconstruction projects and the timing of the fiscal year. For example, PA obligations for Louisiana's Hurricane Katrina, which made landfall in August 2005, peaked in FY2006, which lasts from October 1, 2005 to September 1, 2006.

Scale of PA Expenditures

PA obligations totaled more than $110 billion from FY2000-FY2020 and have increased in the past three years. As shown in **Figure 7**, PA obligations tend to rise in the years following catastrophic disasters such as Hurricanes Katrina, Rita, and Wilma in 2005 and Hurricanes Harvey, Irma, and María and the California wildfires in 2017, as FEMA approves and obligates PA projects for response efforts and long-term reconstruction projects. FY2020 reflected the largest obligations for PA yet—more than $20 billion—even when excluding COVID-19

expenditures. This spike partly reflects two exceptionally large obligations (totaling more than $11 billion) for Hurricane María recovery in Puerto Rico that will support reconstruction of territorial educational and electrical infrastructure.[138]

The large and growing expense of PA may be attributed to several factors. First, neither the Stafford Act nor federal regulations restrict the size of PA awards by incident, Recipient, Applicant, or project.[139] PA is restricted by eligibility, not budgetary or programmatic funding caps (see "Eligibility," above).[140] While federal regulations do establish time limitations during which PA projects must be completed, extensions are frequently granted.[141]

Second, under standard procedures, FEMA reimburses Applicants on the basis of the actual costs of PA projects, so cost overruns may increase the size of PA awards. The PA project approval process enables FEMA to authorize or deny PA for specific costs, but only on the basis of eligibility.

Finally, PA is an extensive, complex program. Projects range from emergency evacuations to the reconstruction of state-wide infrastructure systems. The application process involves more than a dozen steps[142] and the involvement of multiple FEMA officials in addition to representatives of the Recipient, Applicant, and, in some cases, other federal agencies or private contractors. FEMA officials explain that projects commonly require months to scope and years to complete, requiring significant financial, human, and material resources.[143] The costs of PA reflect, in part, this complexity and scope.

As hazards that receive major disaster declarations and PA authorization increase in frequency and severity so, too, do PA costs. Population growth and property development in disaster-prone areas may increase PA obligations per incident, as more communities and facilities eligible to receive PA are placed in harm's way.[144] Additionally, scholars, industry experts, and federal officials have concluded that disaster relief spending, including PA, is increasing and will continue to increase due to the compounding impacts of climate change (see "Cost of PA Program").[145]

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[138] The White House, "President Donald J. Trump Is Supporting the People of Puerto Rico as They Continue to Rebuild Following Natural Disasters," September 18, 2020, https://www.whitehouse.gov/briefings-statements/president-donaldj-trump-supporting-people-puerto-rico-continue-rebuild-following-natural-disasters/#:~:text=PROVIDING%20DISASTER%20relief%3A%20President%20Trump,Rico's%20recovery%20from%20Hurricane%20Maria; for more information see CRS Report R46609, *The Status of Puerto Rico's Recovery and Ongoing Challenges Following Hurricanes Irma and María: FEMA, SBA, and HUD Assistance*, coordinated by Elizabeth M. Webster.

[139] While some projects are funded as capped grants, these award caps are based on cost estimates for individual projects, not predetermined program spending limits. See "PA Alternative Procedures."

[140] Individual PA projects may be capped if completed under Alternative Procedures. These caps are established individually for each project. See "PA Alternative Procedures and Capped Awards."

[141] Per 44 C.F.R. §206.204(c)-(d), emergency work projects must be completed within 6 months from the declaration date, and permanent work within 18 months of the declaration date, though extensions may be granted by the Recipient for six months, and thereafter by FEMA.

[142] A recent illustration of the National Delivery Model reflects 19 steps before obligation. FEMA, *Public Assistance Process Overview*, Briefing Slides, January 16, 2020, slide 11. Provided to CRS by the FEMA Office of Congressional and Legislative Affairs. Available to congressional offices upon request.

[143] See, for example, former FEMA Administrator Brock Long, oral testimony, HSGAC, *Culture of Preparedness*, pp. 6-7.

[144] CBO, *Potential Increase in Hurricane Damage in the United States: Implications for the Federal Budget*, June 2016, pp. 10-11 (hereinafter CBO, *Hurricane Damage: Federal Budget*).

[145] CBO, *Hurricane Damage: Federal Budget*; Adam Rose et al., "The Role of a Deductible/Credit System for Post-Disaster Public Assistance in Meeting Alternative Policy Goals," *Journal of Environmental Planning and*

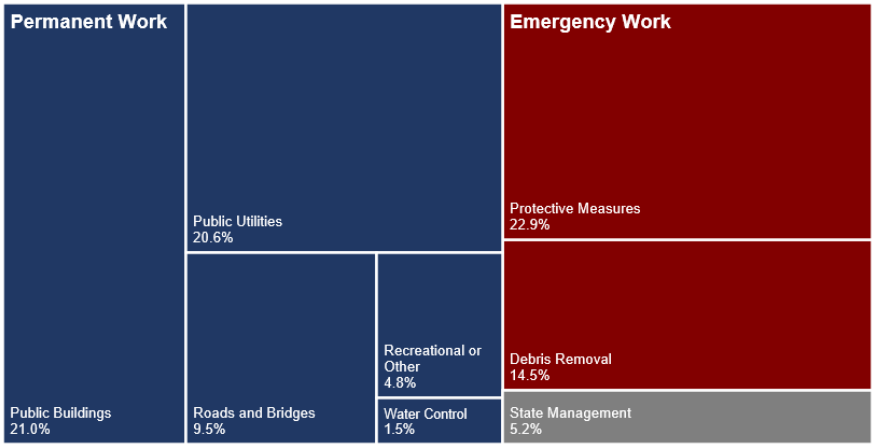
Trends in PA Expenditures

Obligations by Category

Permanent work accounted for more than half ($62 billion, or 57.4% of total) of PA obligations for projects from FY2000 through FY2020 (see **Figure 8**). Just under 40% of PA obligations ($40 billion, or 37.4% of total) supported emergency work projects. The remainder ($5.7 billion, or 5% of total) reflects obligations for PA management costs, which are awarded as a proportion of PA project obligations. The category of work claiming the largest share of obligations was Category B—Emergency Protective Measures ($24.5 billion, or 23% of total). This trend may continue as obligations accrue for Emergency Protective Measures authorized in response to the COVID-19 pandemic, which are not included in these figures. COVID-19 PA obligations (entirely for Emergency Protective Measures) totaled more than $6 billion in FY2020 (see Appendix A).[146]

Figure 8. FEMA's Public Assistance Program Obligations by Category, Fiscal Years 2000-2020

According to FEMA Data, as Share of Total Obligations



Source: CRS analysis of OpenFEMA, "Public Assistance Funded Projects—Details," as of December 9, 2020.

Notes: Reflects sum of "federal share obligated" by "damage category code" according to FEMA designations, less obligations for COVID-19 pandemic as reported in the source data through the "biological incident" tag. CRS cannot verify the accuracy of FEMA data.

Obligations by Hazard Type

PA is an "all-hazards" program available to Applicants following a range of incidents including environmental hazards, terrorist attacks, and industrial accidents. However, from FY2000-FY2020, the largest portion of program dollars supported response and recovery from hurricanes ($75.6 billion, or 70% of total) as well as other flood-related events like severe storms ($13.7 billion, or 13% of total), floods ($5.1 billion, or 5% of total), and coastal storms and typhoons

Management, vol., 63, no. 12 (February 2020), pp. 2163-2193; FEMA, *National Strategy Recommendations: Future Disaster Preparedness*, September 6, 2013, https://www.fema.gov/media-library-data/bd125e67fb2bd37f8d609cbd71b835ae/FEMA%20National%20Strategy%20Recommendations%20(V4).pdf.

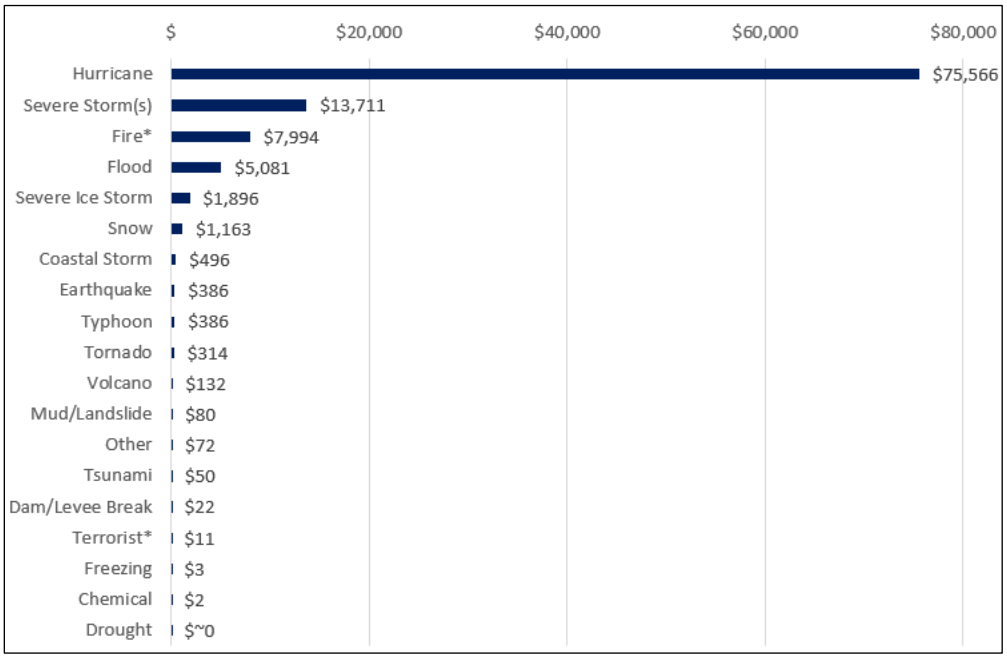
[146] FEMA, *Disaster Relief Fund: Monthly Report as of October 31, 2020*, November 6, 2020, Fiscal Year 2021 Report to Congress, p. 13, https://www.fema.gov/sites/default/files/2020-11/fema_disaster-relief-fund-report_11-2020.pdf.

(see **Figure 9**). Fires (including wildfires and fires from certain explosions) also account for significant expenditures ($8.0 billion, or 7.5% of total).[147] Obligations for other weather- or climate-related emergencies and major disasters (such as snow events, earthquakes, tornados, and drought) each account for 1% or less of cumulative PA spending.

Technological failures, industrial accidents, and acts of violence similarly accounted for a small fraction of overall spending. Terrorist attacks, including costs for the September 11, 2001 attacks in New York and New Jersey, accounted for 4.3% of spending ($4.8 billion) from FY2000-FY2020.[148] A single chemical spill accounted for 0.0014% of spending. "Other" events including power outages, the Columbia Space Shuttle explosions in Texas and Louisiana, a bridge collapse, and a fertilizer plant explosion each accounted for less than 1% of funding.

Figure 9. FEMA's Public Assistance Program Obligations by Hazard, Fiscal Years 2000-2020

According to FEMA Designation of "Incident Type" (in millions of dollars)



Source: CRS analysis of OpenFEMA, "Public Assistance Funded Projects—Details," as of December 9, 2020. Excludes obligations for COVID-19. CRS cannot verify the accuracy of FEMA data.

Notes: Reflects sum of "federal share obligated" by incident type, less obligations for COVID-19 pandemic as reported in the source data through the "biological incident" tag. Categorization reflects FEMA's designation of "incident type," which may include inconsistencies.

* FEMA data categorizes costs for the 9/11 terrorist attacks in New York and New Jersey as "Fire". If categorized as "Terrorist," like costs for 9/11 terrorist attacks in Virginia, then the total costs for "Terrorist" are approximately $3.2 billion and for "Fire" are approximately $4.8 billion.

[147] FEMA data categorizes costs for the 9/11 terrorist attacks in New York and New Jersey as "Fire". If these incidents were categorized as "Terrorist," as FEMA categorized 9/11 terrorist attacks in Virginia, then the total costs for "Terrorist" are approximately $3.2 billion and for "Fire" are approximately $4.8 billion.

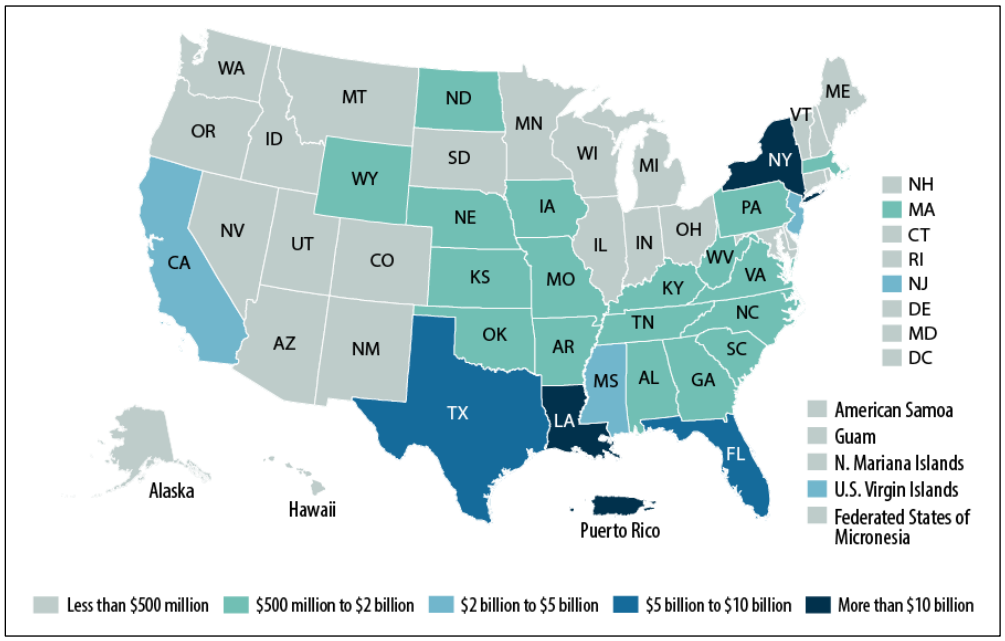
[148] FEMA data categorizes costs for the 9/11 terrorist attacks in New York and New Jersey as "Fire". If these incidents were categorized as "Terrorist," as FEMA categorized 9/11 terrorist attacks in Virginia, then the total costs for "Terrorist" are approximately $3.2 billion and for "Fire" are approximately $4.8 billion.

Obligations by State

The geography of PA obligations reflects spending by hazard and is concentrated around the Gulf coast (see **Figure 10**). Louisiana, New York, Florida, Puerto Rico, and Texas account for the greatest expenditures owing in part to their recoveries from major hurricanes, as well as New York's 9/11 terrorist attacks. California follows due largely to damages from recent wildfires. Many other states and territories, by contrast, have received far fewer PA dollars.

Figure 10. FEMA's Public Assistance Program Obligations by State and Territory, Fiscal Years 2000-2020

According to FEMA Data



Source: CRS analysis of OpenFEMA, "Public Assistance Funded Projects—Details." Reflects sum of "federal share obligated" by state.

Note: Reflects sum of "federal share obligated" by state, less obligations for COVID-19 pandemic as reported in the source data through the "biological incident" tag. CRS cannot verify the accuracy of FEMA data.

Congressional Considerations

Congress has addressed the PA Program repeatedly in hearings and legislation over the past 10 years. Additionally, GAO and the Office of the Inspector General (OIG) of the Department of Homeland Security (DHS) have both conducted numerous overviews of the PA Program in the past decade.

Seven persistent issues from these exchanges are summarized in the following sections. Additional PA policy issues that have been identified but exceed the scope of this report include

- cancelled, disputed, improper, or noncompliant federal and local contracts for disaster recovery work;[149]

[149] See, for example, testimony of Rep. Bennie Thompson, House Homeland Security Committee, *Lessons from the 2017 Disasters*; testimony of Rep. Peter King, House Homeland Security Committee, *Road to Recovery*, pp. 37-38;

- delayed, partial, or improper federal payments and reimbursements;[150]
- inconsistent cost-share adjustments;[151]
- deficiencies in the logistical management and distribution of PA Direct Federal Assistance, including emergency commodities, personnel, and resources;[152]
- delays and opacity with the Public Assistance Appeals process;[153] and
- management controls needed for PA informational technology.[154]

Cost of PA Program

Congress may consider the recent discussion of PA expenditures,[155] given their scale as well as the general lack of restrictions on overall PA spending (see "PA Funding"). Further, multiple federal budget and oversight agencies have cautioned that climate change and population growth in high-risk areas may create further federal fiscal exposure through PA.[156] Congress and FEMA

DHS OIG, *FEMA's Public Assistance Grant to PREPA and PREPA's Contracts with Whitefish and Cobra Did Not Fully Comply with Federal Laws and Program Guidelines*, OIG-20-57, July 27, 2020 (hereinafter DHS OIG, *FEMA Whitefish Contracts*), https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-57-Jul20.pdf; GAO, *Disaster Assistance: FEMA Should Take Additional Actions to Strengthen Fraud Risk Management for Public Assistance Emergency Work Grants*, GAO-20-604, September 2020, https://www.gao.gov/assets/710/709754.pdf (hereinafter GAO, *FEMA Fraud Risk Management*); U.S. Congress, House Subcommittee on Emergency Preparedness, Response, and Recovery and House Subcommittee on Oversight, Management, and Accountability, *FEMA Contracting: Reviewing Lessons Learned from Past Disasters to Improve Preparedness*, 116th Cong., 1st sess., May 9, 2019, H.Rept. 116-18.

[150] See, for example, testimony of Rep. Gonzalez-Colon, U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, *FEMA's Priorities for 2020 and Beyond*, 116th Cong., 2nd sess., March 11, 2020, pp. 20-21; testimony of Rep. Mucarsel-Powell, House Committee on Transportation and Infrastructure Committee, *Disaster Preparedness: DRRA Implementation and FEMA Readiness*, 116th Cong., 1st sess., May 22, 2019, No. 116-18 (hereinafter House Transportation and Infrastructure, *DRRA Implementation)*, pp. 18-20.

[151] GAO, *Improved Criteria*, pp. 33-37.

[152] See GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, GAO-20-701, September 21, 2020, https://www.gao.gov/products/GAO-20-701; DHS OIG, *FEMA's Logistics Supply Chain Management System May Not Be Effective During a Catastrophic Disaster*, OIG-14-151, September 2014, https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-151_Sep14.pdf; FEMA, *2017 Hurricane Season After-Action Report*, July 12, 2018.

[153] GAO, *Additional Actions Would Improve Data Quality and Timeliness of FEMA's Public Assistance Appeals Process*, GAO-18-143, December 15, 2017 (hereinafter GAO, *FEMA's PA Appeals*), https://www.gao.gov/products/GAO-18-143; HSGAC, *Stafford Act Reform*, pp. 2, 7, 29-30, 35, 40, 42; DHS OIG, *Opportunities to Improve FEMA's Public Assistance Appeals Process*, OIG-11-49, March 2011, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_11-49_Mar11.pdf.

[154] GAO, *Emergency Management: FEMA Has Made Progress, but Challenges and Future Risks Highlight Imperative for Further Improvements*, GAO-19-594T, June 12, 2019, pp. 15-16, 26-27 (hereinafter GAO, *FEMA Progress*), https://www.gao.gov/assets/700/699640.pdf.

[155] See, for example, Senate Committee on Homeland Security and Governmental Affairs, *The Path to Efficiency: Making FEMA More Effective For Streamlined Disaster Operations*, 113th Cong., 2nd sess., July 24, 2014, S.Hrg. 113-586, pp. 9-13 (hereinafter HSGAC, *Path to Efficiency*); GAO, *FEMA Progress*, pp. 17-18; CBO, *Hurricane Damage: Federal Budget*, pp. 25-28; GAO, *Limiting the Federal Government's Fiscal Exposure by Better Managing Climate Change Risks*, GAO-19-157SP, pp. 113-115, https://www.gao.gov/assets/700/697245.pdf; Lloyd Dixon, Jason Thomas Barnosky, and Noreen Clancy, *Insuring Public Buildings, Contents, Vehicles, and Equipment Against Disasters: Current Practices of State and Local Government and Options for Closing the Insurance Gap*, RAND Corporation, October 2020 (hereinafter, RAND, *Closing the Insurance Gap*), https://www.rand.org/pubs/research_reports/RRA332-1.html.

[156] GAO, *Natural Hazard Mitigation: Various Mitigation Efforts Exist, but Federal Efforts Do Not Provide a*

have recently acted to control PA spending, authorizing Alternative Procedures and support for insurance coverage and mitigation investments, as discussed below.

The Alternative Procedures pilot program enacted in SRIA modified PA procedures partly to control costs of individual PA projects (for more information see below, "Alternative Procedures").[157] Whether Alternative Procedures have actually reduced costs remains unclear.

FEMA and Congress have also promoted mitigation and insurance coverage among PA Applicants in part to reduce future liability through the PA Program. The enactment of DRRA in 2018 included several provisions to promote mitigation, partly as a means to reduce post-disaster recovery expenditures (see "Promoting Resilience Through PA").[158] FEMA's Risk Rating 2.0 will update flood risk assessments and potentially broaden NFIP insurance requirements; FEMA announced it will be effective in October 2021.[159] This change may increase coverage among PA-eligible facilities, thereby reducing the amount of future uninsured damages eligible for PA. Given that PA obligations are currently concentrated in flood-related events (see **Figure 9**), the consequences of these new requirements could be significant. These innovations may also respond to the concern that PA policies—by providing PA for uninsured damages—may disincentivize Applicants from undertaking mitigating measures or purchasing sufficient insurance.[160]

Congress may consider proposals to address PA spending levels. PA expenditures are partly determined by two critical factors: whether PA is authorized for a given incident, and the federal cost share for that incident. FEMA recently initiated rulemaking to increase the damage thresholds used to evaluate requests for PA, as recommended by GAO and analyzed by the Congressional Budget Office (CBO).[161] FEMA estimates that the proposed rule, had it been finalized, would have reduced the number of major disaster declarations authorizing PA by

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Comprehensive Strategic Framework, GAO-07-403, August 2007, pp. 11, 24-26, https://www.gao.gov/assets/270/265689.pdf; CBO, *Hurricane Damage: Federal Budget*; GAO, *Disaster Recovery: Recent Disasters Highlight Progress and Challenges*, GAO-20-183T, October 22, 2019, pp. 1-2 (hereinafter GAO, *Disaster Recovery Progress*), https://www.gao.gov/assets/710/702173.pdf; GAO, *Fiscal Exposure: Improving Cost Recognition in the Federal Budget*, GAO-14-28, October 2013, p. 7, https://www.gao.gov/assets/660/658620.pdf.

[157] Section 428(c)(1) of the Stafford Act; 42 U.S.C. §5189f(c)(1).

[158] See "Background and Need for Legislation" in U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Recovery Reform Act*, report to accompany H.R. 4460, 115th Cong., 2nd sess., H.Rept. 115-1098, part 1, pp. 15-20; U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Disaster Recovery Reform Act*, report to accompany S. 3041, 115th Cong., 2nd sess., S.Rept. 115-446.

[159] FEMA, "Risk Rating 2.0," https://www.fema.gov/flood-insurance/work-with-nfip/risk-rating; FEMA "Risk Rating 2.0 Overview," September 2019, https://www.fema.gov/media-library-data/1569002542461-a458061bb06a2d7cf6dbdf83bbd8d763/RiskRatingOverview_May2019_to_Sept2019.pdf; CBO, *Expected Costs of Damage from Hurricane Winds and Storm-Related Flooding*, April 2019, pp. 24-25 (hereinafter CBO, *Expected Costs*).

[160] For concerns, see, for example, Meri Davlasheridze and Qing Miao, "Does Governmental Assistance Affect Private Decisions to Insure? An Empirical Analysis of Flood Insurance Purchases," *Land Economics*, vol. 95, no. 1, February 2019, pp. 124-145; DHS OIG, *FEMA's Process for Tracking Public Assistance Insurance Requirements*, OIG-12-18, December 2011, https://www.oig.dhs.gov/assets/Mgmt/OIG_12-18_Dec11.pdf (hereinafter DHS OIG, *FEMA PA Insurance Requirements 2011*); Office of Management and Budget, *A Budget for America's Future: Analytical Perspectives, Fiscal Year 2021 Budget of the U.S. Government*, p. 112, https://www.whitehouse.gov/omb/analytical-perspectives. Other research has found that PA may not disincentivize insurance uptake or mitigation. See literature review and survey data in RAND, *Closing the Insurance Gap*, pp. 52-58.

[161] See CRS Insight IN11534, *Authorizing Stafford Act Public Assistance*, by Erica A. Lee; FEMA, DHS, "Proposed Rule: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," 85 *Federal Register* 80719, December 14, 2020; GAO, *Improved Criteria*, pp. 24-28; CBO, *Hurricane Damage: Federal Budget*, p. 27.

approximately 27% and reduced the total amount of PA provided by several billion dollars over the rule's study period.[162] As a result, more disaster relief costs may be borne by nonfederal entities.[163] PA expenditures are currently concentrated in areas affected by the most costly disasters, and efforts to increase the thresholds to warrant PA may further concentrate PA expenditures (see **Figure 10**).[164] FEMA anticipates that the proposed rulemaking, if enacted, may allow FEMA to focus resources on more severe events rather than smaller disasters.[165] States, as defined by the Stafford Act, could deploy or develop their resources to independently manage smaller incidents.[166]

If Congress seeksto further reduce PA expenses, Congress could consider additional ways to shift a greater share of the costs of disaster recovery back to nonfederal entities, for example, by reducing the minimum federal cost share of PA, encouraging the use of state and territorial rainy day funds and purchase of reinsurance or catastrophe bonds, or implementing a deductible that each Recipient must meet before PA is authorized.[167]

Congress may consider the extent to which nonfederal governments already absorb the rising costs of disasters when reviewing proposals to reduce PA spending.[168] Recent research has shown that SLTT spending on response and recovery is highly variable and inconsistently tracked.[169] In 2003, FEMA's Emergency Management Institute estimated that 3,500-3,700 incidents per year are managed without requests for federal assistance.[170] Congress may consider in particular the

[162] FEMA, "Proposed Rule: Cost of Assistance," p. 80732.

[163] Ibid.

[164] For more information, see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter, pp. 20-22.

[165] FEMA, "Proposed Rule: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," 85 *Federal Register* 80724, December 14, 2020.

[166] Ibid.; see also GAO, *Improved Criteria,* Thomas Frank, "Why the U.S. Disaster Agency Is Not Ready for Catastrophes," *Scientific American,* August 20, 2019.

[167] GAO, *Improved Criteria,* p. 49; HSGAC, *Path to Efficiency,* pp. 8-10; CBO, *Hurricane Damage: Federal Budget,* p. 25; CBO, *Expected Costs,* pp. 27-29; Carolyn Kousky, Brettle Lingle, and Leonard Shabman, "FEMA Public Assistance Grants: Implications of a Disaster Deductible," Policy Brief No. 16-04, *Resources for the Future,* April 2016, https://media.rff.org/documents/RFF-PB-16-04.pdf (hereinafter Kousky et al, "Disaster Deductible").

[168] HSGAC, *Path to Efficiency*, pp. 10-11; Executive Director of the National Association of Counties (NACo) Matt Chase, Letter to FEMA Administrator Craig Fugate, March 21, 2016, https://www.naco.org/sites/default/files/attachments/JPS/NACo%20Disaster%20Deductible%20ANPRM%20Comments.pdf; PEW Charitable Trusts, *How States Pay for Natural Disasters in an Era of Rising Costs*, May 12, 2020, https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-states-pay-for-natural-disasters-in-an-era-of-rising-costs (hereinafter PEW, *How States Pay*); Pew Charitable Trusts, *How States Can Manage the Challenges of Paying for Natural Disasters,* September 16, 2020, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/09/how-states-can-manage-the-challenges-of-paying-for-natural-disasters (hereinafter PEW, *States Manage Challenges*). For further information and discussion, see comments for Proposed Rule on Cost of Assistance Estimates, available at https://www.regulations.gov/document/FEMA-2020-0038-0001/comment.

[169] Pew Charitable Trusts, *What We Don't Know About State Spending on Natural Disasters Could Cost Us,* June 2018, p. 10, https://www.pewtrusts.org/-/media/assets/2018/06/statespendingnaturaldisasters_v4.pdf; GAO, *Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States,* GAO-15-424, March 2015, https://www.gao.gov/assets/670/669277.pdf.

[170] By comparison, Presidents issued an annual average of 146 new Stafford Act declarations (emergencies, major disasters, and Fire Management Assistance Grants) between 2010 and 2020 to which FEMA responded, while also supporting response to incidents that did not receive Stafford Act declarations as well as response from prior year incidents (CRS Analysis of data provided by FEMA Office of Legislative and Congressional Affairs, as of January 15, 2021). FEMA Emergency Management Institute, *A Citizen's Guide to Disaster Assistance,* Independent Study IS-7, September 2003, pp. 3-4, https://training.fema.gov/emiweb/downloads/is7complete.pdf; cited in testimony of Sallie Clark, then President of National Association of Counties, U.S. Congress, House Committee on Transportation and

consequences for state and local budgets strained by the COVID-19 pandemic,[171] as well as the consequences for communities forgoing federal assistance that are smaller, rural, or have fewer resources.[172]

Conversely, Members of Congress who wish to provide further support to nonfederal governments through PA may consider raising the minimum federal cost share in the Stafford Act above 75% for all or some PA costs (for example, for emergency work).

If Congress does seel to reduce federal cost support for disaster recovery, Congress may consider providing additional funds for mitigation projects to help reduce losses and outlays at every level of government to mitigate the resulting burden to nonfederal governments (see section on "Promoting Resilience Through PA").[173]

Oversight Challenges

Congress has expressed persistent interest in the oversight of the PA Program. GAO and the DHS OIG have found that FEMA's rapid response to disasters and emergencies may undermine robust oversight and fraud prevention among PA Applicants.[174]

Infrastructure, *Controlling the Rising Cost of Federal Response to Disaster*, hearing, 114th Cong., 2nd sess., May 12, 2016, H.Rept. 114-40, p. 13, https://www.govinfo.gov/content/pkg/CHRG-114hhrg20214/pdf/CHRG-114hhrg20214.pdf.

[171] For more information, see CRS Report R46298, *General State and Local Fiscal Assistance and COVID-19: Background and Available Data*, by Grant A. Driessen; and "How the COVID-19 Pandemic is Transforming State Budgets," *Urban Institute*, updated March 12, 2021, https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-pages-covid-edition. See also CRS Insight IN11534, *Authorizing Stafford Act Public Assistance*, by Erica A. Lee. See also Proposed Rule on Cost of Assistance Estimates, comment # FEMA-2020-0038-0032 by representatives of Pew Charitable Trust, p. 5, and comment # 2020-0038-0028 by representatives of the U.S. Council of the International Association of Emergency Managers, https://www.regulations.gov/document/FEMA-2020-0038-0001/comment.

[172] National Advisory Committee Report to the FEMA Administrator, November 2020, pp. 12-13, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf; Simone J. Domingue and Christopher T. Emrich, "Social Vulnerability and Procedural Equity: Exploring the Distribution of Disaster Aid Across Counties in the United States," *The American Review of Public Administration*, June 18, 2019; Rebecca Hersher, "How Federal Disaster Money Favors the Rich," *NPR*, March 5, 2019; Sen. Dick Durbin, "Durbin, Duckworth Work to Bring Fairness to FEMA Disaster Declaration Process," webpage, June 13, 2019, https://www.durbin.senate.gov/newsroom/press-releases/durbin-duckworth-work-to-bring-fairness-to-fema-disaster-declaration-process. Rep. Rodney Davis, "Davis Urges FEMA to Consider Local Impact When Determining Latest Illinois Disaster Request," March 9, 2016, https://rodneydavis.house.gov/news/documentsingle.aspx?DocumentID=398970. See also Proposed Rule on Cost of Assistance Estimates, comments # FEMA-2020-0038-003, submitted December 17, 2020, and # FEMA-2020-0038-0020, submitted February 5, 2021, https://www.regulations.gov/document/FEMA-2020-0038-0001/comment.

[173] Governors Steve Bullock and Brian Sandoval on behalf of the National Governor's Association (NGA), submitted testimony, and former FEMA Administrator Brock Long, testimony, HSGAC, *Prioritizing Preparedness*, pp. 5, 61-62; CBO, *Hurricane Damage*, pp. 3, 28; CBO, *Expected Costs*. See also concerns about the effects of reducing PA declarations on mitigation investments in Proposed Rule on Cost of Assistance Estimates, comment # FEMA-2020-0038-0032 by representatives of Pew Charitable Trust, pp. 4-5, and comment # FEMA-2020-0038-0025 by representatives of South Carolina Emergency Management Division, p. 1, https://www.regulations.gov/document/FEMA-2020-0038-0001/comment. See also National Governor's Association, "Coalition Letter On FEMA's Notice Of Proposed Rulemaking: Cost Of Assistance Estimates In The Disaster Declaration Process For The Public Assistance Program," March 5, 2021, https://www.nga.org/advocacy-communications/letters-nga/coalition-letter-fema-assistance-estimates/.

[174] DHS OIG, *FEMA Must Take Additional Steps to Demonstrate the Importance of Fraud Prevention and Awareness in FEMA Disaster Assistance Programs*, July 24, 2019, pp. 2, 6-7 (hereinafter DHS OIG, *FEMA Fraud Prevention*), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-55-Jul19.pdf; GAO, *FEMA Fraud Risk Management*, pp. 2-3.

One factor that contributes to the challenges of PA oversight is the use of contractors to execute eligible work. The House Committee on Oversight and Reform reported that 90% of PA funds reimburse Applicants for procured goods or services.[175] In these cases, federal funds move between four discrete entities: FEMA obligates funds to the Recipient, the Recipient reimburses the Applicant, who has paid a contractor for the cost of completed work. Tracking PA spending and compliance through so many transactions over several years requires considerable effort. In the past several years, the DHS OIG identified more than a dozen FEMA awards with contract compliance issues, including unreasonable costs and deficient oversight.[176]

Additionally, the DHS OIG has identified weaknesses in FEMA's enforcement of the requirement that PA Applicants obtain and maintain insurance for PA-funded projects.[177] The OIG recommended that FEMA improve oversight of insurance coverage and insurance proceeds for PA-funded facilities through enhancements to PA information systems.[178] Congress may monitor FEMA's progress on implementing these recommendations.

In 2018, Congress acted to increase the transparency of the PA Program in DRRA. As required by DRRA, FEMA provides publicly available data on PA obligations.[179] As of October 2019, FEMA planned to publish information on Applicant contracts over $1 million, also required by DRRA.[180] However, PA obligations may not clearly reflect the status of PA projects and broader recovery efforts. For example, project funding may be fully obligated long before the completion of the on-the-ground reconstruction work. Congress may consider requesting other recovery information that is currently not publicly or readily available (e.g., project progress reports, project appeals documents, facility operability metrics). However, Congress may also consider the administrative burden that more comprehensive reporting requirements may put on FEMA, Recipients, or local officials, and how such a volume of complex data may be utilized to conduct oversight.

Promoting Resilience Through PA

Some observers have raised concerns that PA may increase the casualties and costs of future hazards by encouraging reconstruction in disaster-prone areas. For example, CBO has found that

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[175] U.S. House of Representatives Committee on Oversight and Government Reform, *Recurring Problems Hinder Federal Disaster Response and Recovery Efforts*, Majority Report, October 2018, p. 28 (hereinafter House Oversight, *Recurring Problems*).

[176] See DHS OIG, "Audits, Inspections, and Evaluations," https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations?field_dhs_agency_target_id=2&field_fy_value=All. Examples include *DHS OIG, Pre-Disaster Debris Removal Contracts in Florida*, OIG-20-44, August 11, 2020, https://www.oig.dhs.gov/sites/default/files/assets/2020-08/OIG-20-44-Jul20.pdf; *FEMA Should Recover $216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina*, OIG-20-63, September 15, 2020, https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-63-Sep20.pdf; *FEMA Whitefish Contracts*; *FEMA's Public Assistance Grant to PREPA and PREPA's Contracts with Whitefish and Cobra Did Not Fully Comply with Federal Laws and Program Guidelines*, OIG-20-57, July 27, 2020, https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-57-Jul20.pdf.

[177] Submitted testimony of OIG Representative Matt Jadacki, HSGAC, *Stafford Act Reform*, pp. 4-5; DHS OIG, *Verification Review: FEMA's Lack of Process for Tracking Public Assistance Insurance Requirements Places Billions of Tax Dollars at Risk*, OIG-17-50-VR, June 9, 2017, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-50-VR-Jun17.pdf (hereinafter DHS OIG, *Lack of Progress*); DHS OIG, *Tracking PA Insurance 2011*.

[178] DHS OIG, *Lack of Progress*, p. 2.

[179] §1224 of DRRA, P.L. 115-254, adding a new §430 of the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §5189h; FEMA, *Disaster Recovery Reform Act (DRRA) Annual Report*, October 2019, p. 20, (hereainafter FEMA, *DRRA Annual Report 2019)*, https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-annual-report_2019.pdf. See for example, OpenFEMA, "Public Assistance Funded Projects-Details."

[180] §1224 of DRRA, P.L. 115-254, adding a new §430 of the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §5189h; FEMA, *DRRA Annual Report 2019*, p. 20.

federal disaster assistance may subsidize growth in disaster-prone areas by shielding inhabitants, including PA Applicants, from the full costs of response and recovery.[181] Before recent legislative changes, some Members of Congress raised concerns that PA may provide funding to rebuild facilities to predisaster condition—even if those facilities were subject to weak building codes and/or situated in disaster-prone areas. As Representative DeFazio explained

> As I have noted many times before, it is nonsensical that the Federal Government pays to rebuild communities after a disaster back to inadequate standards only to have those facilities destroyed in another disaster with the Federal Government once again coming in and building back to the original standard as opposed to a more resilient and more robust standard. It is time to get smarter about how we respond and how we rebuild after disasters.[182]

The enactment of DRRA in 2018 revised Stafford Act authorities to promote resilience in federally-funded structures.[183] First, DRRA authorized the provision of PA to pay for the costs required to adopt, implement, and enforce building codes on PA projects—supporting resilience and hazard-resistant building across a community.[184] DRRA also authorized FEMA to provide PA to reconstruct disaster-damaged facilities in accordance with "the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs…."[185]

These enhanced authorities may reduce disaster costs and casualties over time, particularly given the risks of future damages exacerbated by climate change.[186] The Multi-Hazard Mitigation Council estimates that each federal grant dollar invested in disaster mitigation projects may save an average of six dollars in post-disaster reconstruction costs.[187] For this reason, the implementation of DRRA may reduce future PA expenditures for response and recovery costs. FEMA has begun implementing many DRRA amendments to promote resilient PA-funded reconstruction, including the ability to receive PA to rebuild to the latest hazard-resistant codes.[188]

Congress may consider additional options to promote mitigation through PA, particularly because some nonfederal mitigation projects have been reduced as a result of COVID-19 outlays.[189] For

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[181] CBO, *Hurricane Damage: Federal Budget,* p. 25.

[182] Rep. Peter DeFazio, oral testimony, HSGAC, *Prioritizing Preparedness,* pp. 6-7.

[183] U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Recovery Reform Act,* report to accompany H.R. 4460, 115th Cong., 2nd sess., H.Rept. 115-1098, part 1 (Washington, DC: GPO, 2018), pp. 15-16; see also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Disaster Recovery Reform Act of 2018,* report to accompany S. 3041, 115th Cong., 2nd sess., S.Rept. 115-446, (Washington, DC: GPO, 2018), pp. 2-4.

[184] §1206(b) of DRRA, P.L. 115-254, as it amends §406(a)(2) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(a)(2).

[185] §1235(b) of DRRA, Division D of P.L. 115-254, as it amends §406(e)(1)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e)(1)(A).

[186] CBO, *Expected Costs,* pp. 4, 6-7, 25-27; International Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Summary for Policymakers,* Cambridge: Cambridge University Press, pp. 1-32.

[187] Multi-Hazard Mitigation Council of the National Institute of Building Sciences, *Natural Hazard Mitigation Saves: 2019 Report*, p. 1, https://cdn.ymaws.com/www.nibs.org/resource/resmgr/reports/mitigation_saves_2019/mitigationsaves2019report.pdf (hereinafter Mitigation Council, *Mitigation Saves*). Actual savings may vary depending on the occurrence, severity, location of future disasters and actual federal relief outlays. See GAO, *Natural Disasters: Economic Effects of Hurricanes Katrina, Sandy, Harvey, and Irma,* GAO-20-633R, September 10, 2020, p. 11.

[188] §1235(b) of DRRA, P.L. 115-254, as it amends §406(e)(1)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e)(1)(A); FEMA, "Consensus-Based Codes, Specifications and Standards for Public Assistance," FEMA Recovery Interim Policy FP-104-009-11 Version 2, December 2019.

[189] Lauren Sommer, "California Was Set to Spend over $1 Billion to Prevent Wildfires. Then Came COVID-19," *NPR,*

example, Congress could consider increasing the allowable cost share for PA mitigation projects.[190] Alternatively, Congress may consider whether to impose restrictions on PA in areas prone to nonflood hazards (the Stafford Act already restricts PA in high-risk flood zones.)[191] Congress may also review FEMA's restrictions on the relocation of facilities sited in disaster-prone areas.[192] Some nonfederal officials may be concerned that mitigation is costly, overly burdensome, or may detract from other economic development goals.[193] Congress may also consider whether FEMA's other mitigation programs are more effective vehicles for mitigation policies and funds.[194]

Project Execution Delays

Recovery delays associated with FEMA's multi-step PA application and review process has attracted some concern. Some Recipients and Applicants report that the program is overly complex and time-intensive, and find that changing guidance impedes project execution.[195]

As noted earlier, regulations require that emergency work projects be completed within 6 months and permanent work within 18 months from the date of declaration, though Recipients and FEMA may grant extensions.[196] Publicly available data suggests that PA projects commonly exceed the timeframes established in regulations. For example, FEMA data on permanent work projects including mitigating measures reflects that approximately 60% of project closeout dates exceeded the 18-month deadline.[197] Additionally, GAO and the DHS OIG have documented PA project delays multiple times, particularly following severe events.[198]

In 2017, FEMA implemented a new "National Delivery Model" to streamline and improve the complicated, multi-step PA grant review process and improve workforce readiness.[199] The new

June 7, 2020.

[190] The Stafford Act currently authorizes FEMA to increase the federal cost share for projects the increase readiness or resilience from 75% to 85%; §406(b)(3) of the Stafford Act; 42 U.S.C. §5172(b)(3).

[191] Restrictions on PA in high-risk flood zones may be found at Section 406(d) of the Stafford Act, 42 U.S.C. §5172(d). Kousky, Carolyn, "Managing shoreline retreat: A US perspective," *Climate Change* Vol. 124, pp. 9-20, 2014; Testimony of Alice C. Hill, Council on Foreign Relations, U.S. Congress, House of Representatives Select Committee on the Climate Crisis, *Creating a Climate Resilient America: Reducing Risks and Costs,* 116th Cong., 1st sess., November 20, 2019, No. 116-15, p. 46 (hereinafter House Committee on Climate Crisis, *Climate Resilient America*).

[192] Testimony of former FEMA Administrator Craig Fugate, House Select Committee on the Climate Crisis, *Climate Resilient America,* p. 38; FEMA, *PAPPG 2020,* pp. 160-161.

[193] GAO, *Disaster Resilience: Actions Are Underway, but Federal Fiscal Exposure Highlights the Need for Continued Attention to Longstanding Challenges,* GAO-14-603T, May 2014, pp. 4-6; National Research Council, *Disaster Resilience: A National Imperative,* Washington, DC: The National Academies Press, 2012.

[194] See CRS Insight IN11515, *FEMA Pre-Disaster Mitigation: The Building Resilient Infrastructure and Communities (BRIC) Program*, by Diane P. Horn; CRS Insight IN11187, *Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance*, by Diane P. Horn.

[195] See, for example, House Homeland, *FEMA Readiness,* pp. 27-29.

[196] 44 C.F.R. §206.204(c).

[197] CRS analysis of data provided by FEMA Office of Congressional and Legislative Affairs, as of January 2021.

[198] For example, GAO, *Puerto Rico Hurricanes 2019*; GAO, *FEMA Actions,* pp. 27-29; DHS OIG, *FEMA's Longstanding IT Deficiencies Hindered 2017 Response and Recovery Operations,* OIG-19-58, August 27, 2019, pp. 17-19, https://www.oig.dhs.gov/sites/default/files/assets/2019-08/OIG-19-58-Aug19.pdf.

[199] FEMA, "Public Assistance Delivery Model," fact sheet, https://www.fema.gov/sites/default/files/2020-07/fema_pa_delivery-model_factsheet.pdf; U.S. Congress, House Committee on Homeland Security, *Assessing FEMA's Readiness for Future Disasters,* 116th Cong., 1st sess., June 12, 2019, Serial No. 116-26, pp. 27-28 (hereinafter House Homeland, *FEMA's Readiness*).

system aimed to expedite and standardize PA project review by enlisting experts to formulate and process PA projects throughout the United States. Among the features of the new system is a program delivery manager who serves as a single point of contact for Applicants, a new digital information system for PA grants (the PA Grants Portal),[200] and the centralization of many PA project scoping, costing, and review steps in Consolidated Resource Centers (CRCs; four are in operation nationwide).[201] After testing the National Delivery Model from 2015 to 2017, FEMA implemented the system in November 2017.[202]

GAO found that some Applicants reported these initiatives increased the ease of the PA application process, particularly the availability of digital documentation submission and a single FEMA point of contact.[203] However, others reported persistent problems with the model, including delays with FEMA project reviews and reimbursement processing.[204] GAO subsequently recommended, and FEMA implemented, multiple improvements to its PA information technology system.[205] FEMA has also announced additional initiatives to expedite PA, including simplified PA applications, remote damage assessments, and simplified "self-certification" for Applicants completing "small projects."[206] Some of these initiatives have already proved successful, according to FEMA; for example, the small project certification process reportedly reduced review time by 50%.[207] FEMA employed a reportedly simplified PA application for COVID-19 costs, and expanded the use of remote disaster assessments during the pandemic.[208]

Congress may consider additional options to expedite project execution. Some have proposed reviewing the PA reimbursement process to remedy cash flow constraints that stall reconstruction progress while Applicants await reimbursement.[209] One option includes broadening access to cash

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[200] FEMA, PA Grants Portal, https://grantee.fema.gov/.

[201] GAO, *PA Redesign*, p. 15. For more information on the PA Grants portal, see FEMA, *PAPPG 2020*, p. 35; FEMA, Grants Portal, https://grantee.fema.gov/; FEMA, "How to Apply for Public Assistance," https://www.fema.gov/assistance/public/apply; FEMA, "PA Process Overview," briefing slides January 16, 2020, provided by FEMA Office of Congressional and Legislative Affairs to CRS (hereinafter FEMA "PA Process Overview"). Available to congressional staff upon request.

[202] FEMA "PA Process Overview, p. 44.

[203] GAO, *Wildfire Disasters: FEMA Could Take Additional Actions to Address Unique Response and Recovery Challenges*, GAO-20-5, October 2019, pp. 19-20, https://www.gao.gov/assets/710/702013.pdf (hereinafter GAO, *Wildfires: Additional Actions*); GAO, *PA Redesign*, p. 15; GAO, *2017 Hurricanes and Wildfires Initial Observations on the Federal Response and Key Recovery Challenges*, GAO-18-472, September 2018, pp. 58-59, https://www.gao.gov/assets/700/694231.pdf (hereinafter GAO, *2017 Hurricanes and Wildfires*).

[204] House Homeland, *FEMA's Readiness,* pp. 27-28; GAO, *2017 Hurricanes and Wildfires*, pp. 42, 59.

[205] Testimony of Former FEMA Administrator Jeffrey Byard, U.S. Congress, House Committee on Transportation and Infrastructure, *An Assessment of Federal Recovery Efforts from Recent Disasters,* 116th Cong., 1st sess., October 22, 2019, no. 116-38, p. 28 (hereinafter House T&I, *Recent Disasters*).

[206] Ibid., pp. 143-144. Small projects are those under $132,800 for FY2021 application procedures. FEMA, "Per Capita Impact Indicator and Project Thresholds," https://www.google.com/search?q=fema+per+capita+indicator&rlz=1C1CHBD_enUS879US879&oq=FEMA+per+capita+indicator&aqs=chrome.0.0i457j0i22i30j69i64j69i59j69i60j69i65j69i60.2690j0j7&sourceid=chrome&ie=UTF-8.

[207] Ibid.

[208] FEMA, "Public Assistance Simplified Application," April 14, 2020, https://www.fema.gov/fact-sheet/public-assistance-simplified-application; FEMA, "COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season," May 2020, p. 14, https://www.fema.gov/media-library-data/1589997234798-adb5ce5cb98a7a89e3e1800becf0eb65/2020_Hurricane_Pandemic_Plan.pdf.

[209] See, for example, testimony by Rep. Plaskett, Rep. Titus, and Rep. Garamendi, House T&I, *DRRA Implementation*, pp. 26-27, 33, 119; testimony by Rep. Garamendi, House T&I, *Recent Disasters*, pp. 44-45.

advances, which are currently only permitted in limited circumstances for large projects (those exceeding $132,800 for FY2021).[210] FEMA does permit Applicants completing small projects to access funds as soon as they are obligated, reducing complications and delays (see **Appendix B**).[211] However, Congress may consider that advancing funds could cause additional oversight challenges, as may other efforts to streamline PA application review. State and local stakeholders have also proposed that FEMA permit PA for management costs to be shared across disasters, reducing documentation burdens for Recipients and review time for FEMA.[212] Additionally, remedies for federal, state, and local capacity shortfalls may reduce project completion times and expedite recovery (see next section on "Strained Federal, State, and Local Workforce Capacity").

Strained Federal, State, and Local Workforce Capacity

The federalist design of the PA Program requires considerable involvement of both federal and SLTT officials throughout project execution. Applicants must understand program expectations, eligibility requirements, and rules and manage large-scale, multi-year projects. FEMA officials must conduct site inspections, assist Applicants and Recipients in program navigation, scope projects, estimate costs, and conduct compliance reviews. Recipients participate in many of these activities and additionally manage many PA awards throughout the jurisdiction.[213] The demand on participating agencies across all levels of government—and incapacity to meet this demand—is a source of persistent concern among some stakeholders and Members of Congress.[214]

According to multiple reports and testimony by GAO and the DHS OIG over the past 10 years, high turnover rates, lack of adequate training, and insufficient expertise among the FEMA PA workforce consistently contributed to recovery delays.[215] Both oversight agencies have made several recommendations to address these concerns, including increasing staff, training, and establishing a qualification-tracking system.[216]

Insufficient capacity among PA Recipients and Applicants also reportedly delays recovery and undermines compliance. GAO and DHS OIG have concluded that insufficient familiarity with PA

[210] See 44 C.F.R. §206.205(b); 2 C.F.R. §200.305; email from FEMA Office of Congressional and Legislative Affairs to CRS, September 10, 2020. FEMA defines project size based on an annually adjusted cost threshold. In FY2021, a small project is a project above $3,320 and equal to or less than $132,800. FEMA, "Per Capita Impact Indicator and Thresholds," https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator.

[211] 44 C.F.R. §206.205(a); 2 C.F.R. §200.305.

[212] Testimony, National Emergency Management Agency (NEMA) representative Sima Merick, House T&I, *DRRA Implementation*, pp. 44-45, 117, 119.

[213] Erin J. Greten and Ernest B. Abbott, "Representing States, Tribes, and Local Governments Before, During, and After a Presidentially-Declared Disaster," *The Urban Lawyer*, vol. 48, no. 3 (Summer 2016), pp. 489-561.

[214] See, for example, GAO, *PA Redesign*, pp. 2-3; House T&I, *DRRA Implementation*, pp. 116, 125; GAO Representative Chris Currie, testimony, House T&I, *Recent Disasters*, pp. 36-38.

[215] GAO, *Hurricane Sandy: An Investment Strategy Could Help the Federal Government Enhance National Resilience for Future Disasters*, GAO-15-515, July 2015, pp. 25-26, 31, https://www.gao.gov/assets/680/671796.pdf (hereinafter GAO, *Resilience in Hurricane Sandy*); Submitted Testimony OIG Representative Matt Jadacki, HSGAC, *Stafford Act Reform*, pp. 42-44; GAO, *PA Redesign*, pp. 2-3, 5, 12. Department of Homeland Security, Office of Inspector General (OIG), *FEMA Can Enhance Readiness with Management of Its Disaster Incident Workforce*, OIG-16-127-D, September 2, 2016, pp. 7, 11, https://www.oig.dhs.gov/assets/GrantReports/2016/OIG-16-127-D-Sep16.pdf (hereinafter DHS OIG, *FEMA Workforce*); GAO, *2018 Pacific Disasters*, pp. 17-18; GAO, *Wildfires: Additional Actions*, pp. 19-21; House Homeland, FEMA's Readiness, pp. 32-33; GAO, *Puerto Rico Hurricanes 2019*, pp. 21-22; GAO, *2017 Hurricanes and Wildfires*, p. 112; GAO, *FEMA Disaster Workforce: Actions Needed to Address Deployment and Staff Development Challenges*, GAO-20-360, May 2020 (hereinafter GAO, *FEMA Workforce*), https://www.gao.gov/assets/710/706619.pdf); GAO, *FEMA Progress*, pp. 21-26.

[216] GAO, *FEMA Workforce*, p. 16, 44-45; DHS OIG, *FEMA Workforce*, p. 4.

Program and eligibility rules among SLTT officials slows recovery and increases compliance violations.[217] Nine out of ten surveyed tribal officials reported to GAO that a lack of capacity and the need for technical assistance from FEMA was a major factor in decisions to apply for FEMA aid as a Recipient or as an Applicant through a state's request.[218] Lack of state and local capacity may be a particular problem in cases of catastrophic disasters, as in the case of Puerto Rico's recovery from the 2017 hurricanes.[219] Local officials may also lack the capacity and expertise required to identify and complete mitigation projects through PA, resulting in missed opportunities to rebuild resiliently.[220] Further, insufficient construction workforce availability has complicated recovery from large incidents in relatively remote areas like the Virgin Islands (recovering from hurricanes in 2017) and the Commonwealth of Northern Mariana Islands and Guam (both recovering from typhoons in 2018).[221]

FEMA has responded to a number of these workforce issues, for example, by enlisting PA experts in centralized project review as part of the National Delivery Model in 2017,[222] hiring an additional 1,200 PA staff in 2018,[223] and enhancing training and performance management systems for FEMA staff.[224] In 2019 and 2020, GAO evaluated FEMA's improvements to its PA disaster workforce and deployment challenges. GAO recognized that FEMA had implemented new staffing models to address appeals processing, developed new regional workforce plans, and enhanced coach-and-evaluator training.[225]

Despite these changes, workforce incapacity continues to raise concern among FEMA personnel, PA Recipients, and Applicants.[226] For example, new hires have sometimes received insufficient training in PA policies.[227] As a result, FEMA may deploy field personnel unable to fulfill certain responsibilities, including PA administration.[228] FEMA has also acknowledged that the implementation of the National Delivery Model increases Applicants' responsibility for PA project execution—possibly compounding the strain on the local workforce.[229] Where Applicants are not sufficiently trained, PA may operate slowly or inconsistently.[230] For example, officials in

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[217] GAO, *2018 Pacific Disasters,* pp. 18-20. DHS OIG, *Capacity Audit of FEMA Grant Funds Awarded to the Puerto Rico Department of Transportation and Public Works,* OIG-20-25, April 9, 2020.

[218] GAO, *Emergency Management: Implementation of the Major Disaster Declaration Process for Federally Recognized Tribes*, GAO-18-443, May 2018, pp. 17-20, https://www.gao.gov/assets/700/691962.pdf.

[219] For example, the Puerto Rico Electric Authority required additional resources to execute PA projects to restore the territory's electric grid following the 2017 hurricanes. Testimony of Carlos Torres, Puerto Rico Power Restoration Coordinator and consultant for Edison Electric Institute, House Committee on Energy and Commerce, "Puerto Rico's Electric Infrastructure," hearing, 115th Cong., 2nd sess., April 11, 2018, p. 54.

[220] GAO, *Resilience in Hurricane Sandy,* pp. 42-44.

[221] GAO, *2018 Pacific Disasters,* pp. 19-20; GAO, *U.S. Virgin Islands Recovery: Additional Actions Could Strengthen FEMA's Key Disaster Recovery Efforts*, pp. 20-21.

[222] GAO, *PA Redesign,* p. 21.

[223] GAO, *2018 Pacific Disasters,* p. 18.

[224] FEMA Representative Joseph Nimmich, Testimony, HSGAC, *The Path to Efficiency*, pp. 4-5; GAO, *FEMA Progress*, pp. 17-18.

[225] GAO, *FEMA Disaster Workforce: Actions Needed to Address Deployment and Staff Development Challenges,* GAO-20-360, May 2020, pp. 3, 26, 22-23, 29-31, https://www.gao.gov/assets/710/706619.pdf (hereinafter GAO, *FEMA Workforce*).

[226] GAO, *FEMA Progress,* pp. 25-26.

[227] GAO, *2018 Pacific Disasters,* p. 18.

[228] Ibid.

[229] GAO, *PA Redesign,* pp. 22-24.

[230] Ibid.; Committee on Post-Disaster Recovery of a Community's Public Health, Medical, and Social Services; Board

Texas reported that large, populous areas like Houston recovered more quickly after Hurricane Harvey under the National Delivery Model than smaller communities that lacked emergency management experts.[231]

Some stakeholders have noted that the increasing number and scale of PA-eligible disasters has exacerbated the strain on PA stakeholders. The especially active 2017 and 2018 disaster seasons revealed vulnerabilities in FEMA's PA capacity and general deployment strategy. In response, FEMA and GAO issued new recommendations.[232] In the summer of 2020, GAO recommended that FEMA develop a plan to accurately assess employee competency, assess deployment efficacy, and create a new staff development program.[233] Congress may monitor implementation of these recommendations.

Congress may also monitor newly proposed rulemaking by FEMA that intends to reduce the number of PA-eligible disaster declarations, shifting more of the work of smaller incident response from FEMA to SLTTs.[234] FEMA explains

> the constraints imposed by numerous and cumulative smaller disasters affect the Agency's readiness to support disaster recovery operations without unacceptable delays by consuming FEMA staff time and resources that would be better used for larger disasters…. FEMA could be faster and more effective in planning for, responding to, and recovering from large catastrophic disasters if more of its workforce was able to focus on such large disasters, rather than being dispersed to numerous smaller incidents more appropriately handled by the States.[235]

Congress may monitor FEMA's proposed rulemaking, including comments received during the public notice and comment period.[236] Several stakeholders have expressed concern that the rulemaking would leave state and local governments without the necessary capacity to respond to disasters.[237]

Finally, Congress may consider proposals to increase technical assistance available to Recipients and Applicants, particularly those with fewer available resources and less expertise.[238] Additional

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on Health Sciences Policy; Institute of Medicine, "Disaster Recovery Funding; Achieving a Resilient Future?" *Healthy, Resilient, and Sustainable Communities After Disasters: Strategies, Opportunities, and Planning for Recovery*, Washington: National Academy of Academies Press, 2015.

[231] GAO, *Natural Disasters: Economic Effects of Hurricanes Katrina, Sandy, Harvey, and Irma,* September 10, 2020, GAO 20-633R, p. 6, https://www.gao.gov/assets/710/709293.pdf.

[232] GAO, *FEMA Progress,* pp. 21-26; GAO, *FEMA Workforce,* pp. 2, 18-26; FEMA, *2017 Hurricane Season FEMA After-Action Report (AAR),* July 12, 2018, p. 39, https://www.fema.gov/media-library-data/1533643262195-6d1398339449ca85942538a1249d2ae9/2017FEMAHurricaneAARv20180730.pdf.

[233] GAO, *FEMA Workforce,* pp. 43-44.

[234] FEMA, "Proposed Rule: Cost of Assistance Estimates," pp. 80723-80724.

[235] Ibid.

[236] Comments received during the rulemaking process are generally available on http://www.Regulations.gov. The docket for this rule, "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," Docket ID: FEMA-2020-0038, is available at https://www.regulations.gov/docket/FEMA-2020-0038.

[237] See, for example, Proposed Rule on Cost of Assistance Estimates, comment # FEMA-2020-0038-0044 by Diane Yentel, President and CEO, National Low Income Housing Coalition, and comment # FEMA-2020-0038-0054 by Sima Merick, President, National Emergency Management Association, https://www.regulations.gov/document/FEMA-2020-0038-0001/comment.

[238] GAO, *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance*, GAO 20-221, February 2020, pp. 30-31, https://www.gao.gov/assets/710/704282.pdf (hereinafter GAO, *FEMA Actions*). On targeted technical assistance outreach to socially vulnerable communities, see Simone J. Domingue and Christopher T. Emrich, "Social Vulnerability and Procedural Equity: Exploring the

technical assistance may help Recipients and Applicants navigate the complex PA Program and execute projects. Such improvements may in turn expedite recovery and reduce compliance issues.

Alternative Procedures

The use of Alternative Procedures has been a significant source of congressional interest since their authorization in the Sandy Recovery Improvement Act in 2013 (for a detailed description of Alternative Procedures see "PA Alternative Procedures" and **Appendix B**).[239]

One area of interest concerns the implementation of Alternative Procedures as a pilot program. SRIA amended the Stafford Act after Hurricane Sandy to authorize FEMA to promulgate regulations or "expeditiously" implement Alternative Procedures as a pilot program without standard rulemaking.[240] FEMA has not promulgated rules for Alternative Procedures since implementation in 2013. Instead, FEMA has issued four distinct iterations of guidance for permanent work projects and seven iterations of guidance for debris removal, in addition to guidance for specific disasters widely utilizing Alternative Procedures (**Appendix C**). The proliferation of policy guidance may have generated confusion among Recipient and Applicants, contributing to recovery delays and expenditures ineligible for PA.[241] Promulgating Alternative Procedures in regulations may increase clarity and facilitate recovery. However, promulgating regulations may reduce FEMA's flexibility to expeditiously improve the Alternative Procedures pilot. Congress may inquire if, or when, FEMA plans to promulgate such regulations.

A second issue relates to the fiscal capacity of Applicants who implement PA projects under Alternative Procedures. Applicants' assumption of the financial risk of budget overruns under Alternative Procedures may complicate recovery efforts. For example, Applicants without sufficient capital to initiate projects before receiving reimbursement or to cover cost overruns may not be able to complete PA-funded projects and advance recovery efforts.[242]

Finally, Congress may consider the delays and challenges associated with the use of fixed cost estimates in Alternative Procedures. One Member of Congress noted that Alternative Procedures was "intended to provide States and territories significantly more flexibility in building back better and faster. Yet [it] seems to be looking more like the paper-intensive 406 [standard procedures] process."[243] Reports that the use of Alternative Procedures sometimes encumber or

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Distribution of Disaster Aid Across Counties in the United States," *The American Review of Public Administration,* vol. 49, no. 8, pp. 897-913, November 2019.

[239] The Sandy Recovery Improvement Act (SRIA), P.L. 113-2, 127 Stat. 39; Stafford Act Section 428. The Public Assistance Program Alternative Procedures are codified at Section 1102 of SRIA; 42 U.S.C. §5189(f).

[240] Section 428(f) of the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §4189f(f).

[241] DHS OIG, *Clearer Guidance Would Improve FEMA's Oversight of the Public Assistance Alternative Procedures Pilot Program*, OIG-16-03-D, October 27, 2015, https://www.oig.dhs.gov/assets/GrantReports/2016/OIG-16-03-D-Oct15.pdf (hereinafter DHS OIG, *Clearer Guidance*); GAO, *Puerto Rico Hurricanes 2019*, p. 22; GAO, *FEMA Actions*, pp. 33-35.

[242] For example, see Puerto Rico's recovery from Hurricane Maria. To address liquidity constraints for Applicants completing large projects under Alternative Procedures, the Government of Puerto Rico announced in 2020 the establishment of a $1 billion Working Capital Fund. Government of Puerto Rico, *2020 Fiscal Plan for Puerto Rico, As Submitted to the Financial Oversight and Management Board for Puerto Rico on May 3, 2020*, pp. 28-29, https://www.aafaf.pr.gov/assets/2020-fiscal-plan-may-3-2020.pdf. CRS Report R46609, *The Status of Puerto Rico's Recovery and Ongoing Challenges Following Hurricanes Irma and María: FEMA, SBA, and HUD Assistance*, coordinated by Elizabeth M. Webster.

[243] Testimony of Rep. Meadows, House T&I, *Recent Disasters*, pp. 142-143.

slow recovery may be of interest to Congress, given statutory aims to expedite and increase the flexibility of PA through the pilot program.[244]

Some observers have attributed delays to the need to determine and establish consensus on estimated costs for PA Alternative Procedures. FEMA and GAO have both attributed delays to the process of determining, validating, and establishing consensus on fixed-cost estimates in Puerto Rico; GAO referred to this process as a "massive challenge."[245] Other recovery efforts have also reported delayed agreements on cost estimates, including the 2018 typhoons in the Commonwealth of the Northern Mariana Islands (CNMI).[246] Recovery stalled in both Puerto Rico and the CNMI. Two years after the hurricanes made landfall in Puerto Rico, FEMA reported that 19 projects out of 9,344 identified damaged worksites on the island (0.2% of the total) had finalized fixed cost estimates.[247] In the case of the CNMI, fixed-cost estimates for Alternative Procedures projects initiated in November 2018 were settled in February-May 2020.[248]

SRIA required the DHS OIG to assess and report on the efficacy of Alternative Procedures.[249] The OIG reported in June 2018 that too few projects had been implemented under Alternative Procedures to undertake the review.[250] Congress may consider new opportunities for program assessment given the growth of Alternative Procedures expenditures since authorization. Congress may consider reviews that include assessment of cost savings under Alternative Procedures, in addition to the status of projects, Applicants' fiscal capacity to meet unforeseen costs, and the overall progress of recovery.

Agency Discretion

Some Members of Congress, the DHS OIG, and nonfederal stakeholders have raised concern regarding FEMA's discretion in determining the eligibility of specific costs and work for PA.[251] For example, in 2020, FEMA determined that Personal Protective Equipment (PPE) purchases and other emergency measures enacted by schools and courthouses in response to the COVID-19 pandemic were ineligible for PA, given that such purchases were not "directly related to the performance of otherwise eligible emergency work."[252] The determination garnered significant criticism from Applicants, news media, and some Members of Congress.[253] Additionally, the DHS

[244] Section 428(c) of the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §4189f(c).

[245] Omar J. Marrero, Governor of Puerto Rico's Authorized Representative, Letter to Gene I. Dodaro, Comptroller General of the United States, January 30, 2019, in GAO, *Puerto Rico Hurricanes 2019*, pp. 37-38; GAO Representative Chris P. Currie, oral testimony, U.S. Congress, House Homeland Security Subcommittee on Emergency Preparedness, Response and Recovery, *Hearing on Puerto Rico and Virgin Islands Hurricane Recovery*, 116th Cong., 1st sess., July 11, 2019.

[246] GAO, *2018 Pacific Disasters*, pp. 16-18.

[247] GAO, *FEMA Actions*, p. 18

[248] GAO, *2018 Pacific Disasters*, pp. 16-17.

[249] Section 428(h)(1)-(2) of SRIA, 42 U.S.C. §5189f(h)(1)-(2).

[250] DHS OIG, *Sandy Recovery Improvement Act Review*, OIG-18-66, June 1, 2018, https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-66-Jun18.pdf (hereinafter DHS OIG, *SRIA Review*).

[251] DHS OIG, Submitted Testimony, HSGAC, *Stafford Act Reform*, pp. 41-42; GAO, *PA Redesign*, pp. 12-13; House Oversight, *Recurring Problems*, p. 33.

[252] FEMA, "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)," FEMA Policy FP 104-009-19, p. 4, https://www.fema.gov/sites/default/files/2020-09/fema_public-assistance-eligibility-for-covid_policy_9-1-2020.pdf.

[253] See, for example, Sen. Hirono et al., Letter to FEMA Administrator Peter Gaynor, November 9, 2020, https://www.hirono.senate.gov/imo/media/doc/

OIG and GAO have cited examples where FEMA has approved ineligible—and sometimesfraudulent—costs (see "Oversight Challenges").[254] On the other hand, some Members of Congress and FEMA officials have noted that it is important that FEMA retain flexibility given the particularities of each incident.[255]

Recent statutory and policy changes may provide clarity and consistency to FEMA's eligibility determinations. GAO found that some Applicants reported that certain changes to PA delivery through the National Delivery Model, including the assignment of a single point of contact for Applicants, may remedy some of the confusion created by program rules and procedures.[256]

However, Applicants' reported challenges and delays with eligibility determinations have persisted even after the implementation of the National Delivery Model. GAO has found that in some cases, eligibility determinations may seem less transparent under the new model, as reported by some PA Applicants during the 2017 hurricanes and wildfires:

> [L]ocal officials in a Texas jurisdiction said that they received better customer service under the old model because the project manager writing the project worksheet could provide the applicant some information immediately to help gauge eligibility, and inform local fiscal decisions.… [W]ith the new process, all of the information is passed to centralized staff to write up the project while the Program Delivery Manager only collects project information, leaving the applicant unaware of next steps or reimbursement eligibility…. According to officials from three of the eight jurisdictions, FEMA's process and decision-making is not clear and this is further complicated by the inability of FEMA staff to fully articulate the new process, due in part to limited training.[257]

DRRA included several provisions that limit FEMA's discretion. For example, Section 1207(d) required that FEMA presume certain cost estimates provided by Applicants using Alternative Procedures to be reasonable and eligible, as long as the estimates were prepared by licensed engineers.[258] Previously, FEMA could determine the reasonability and eligibility of cost estimates on a case-by-case basis. Section 1219 of DRRA also gives some PA Applicants a right to independent arbitration following disputes with FEMA, provided they have initiated an appeal.[259]

Congress may monitor the implementation of DRRA provisions regarding FEMA discretion over PA eligibility determinations. Congress may review recent legislative proposals to further define costs that are eligible for assistance through PA. For example, the FEMA Assistance Relief Act of 2020 (S. 4627; H.R. 8266, 116th Congress) specified costs eligible for PA for COVID-19 response work, following recent FEMA policy disallowing certain costs.

2020.11.09_Joint%20Letter%20FEMA%20Public%20Assistance%20COVID-19.pdf; National Governors Association et al., Letter to FEMA Administrator Peter Gaynor, August 25, 2020, https://www.nga.org/advocacy-communications/letters-nga/letter-to-fema-regarding-covid-19-reimbursable-expenses/; Evie Blad, "States Worry FEMA Won't Cover Costs of COVID-19 Gear for Educators, Schools," *EdWeek*, August 28, 2020, https://blogs.edweek.org/edweek/campaign-k-12/2020/08/fema-ppe-teachers-reimbursement-nga.html.

[254] For example, testimony of DHS Inspector General John Roth, HSGAC, *Path to Efficiency*, pp. 28-31.

[255] Former Chairman Begich, HSGAC, *Path to Efficiency*, p. 9.

[256] GAO, *PA Redesign*, p. 21.

[257] GAO, *2017 Hurricanes and Wildfires*, p. 59.

[258] §1207(c) of DRRA, P.L. 115-254, as it amends §428(d) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189f(d).

[259] §1219(c) of DRRA, P.L. 115-254, as it amends §423(d) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189a(d). See FEMA, "Public Assistance Appeals and Arbitration under the Disaster Recovery Reform Act," fact sheet, https://www.fema.gov/media-library-data/1583884001266-0b7a81345b913331f5ac77dfc81cd153/FactSheet_DRRA_PA_Appeals_Arbitration.pdf.

Concluding Observations

The PA Program has undergone significant transformation in recent years. Who gets PA funds, how, and for what purpose has changed due to recent legislation and ongoing executive action.

During the same time, Stafford Act declarations have authorized PA for disasters of exceptional severity and cost—including Hurricane Sandy, the severe hurricane season of 2017, and the historic 2017, 2018, and 2020 wildfire seasons. Obligations for these events and others made FY2020 the most expensive year for PA Program to date (see **Figure 7**), yet FEMA forecasts these costs will be eclipsed by FY2021 spending.[260] The mobilization of PA as a primary mechanism to respond to the COVID-19 pandemic accounts for much of the anticipated spike and raises additional questions about the widening scope of the program (see **Appendix A**). Furthermore, federal agencies, including FEMA, have acknowledged that climate change could alter the predictability, types, and magnitudes of hazards facing the United States, possibly increasing demands on federal disaster relief.[261]

While FEMA responds to these intensifying demands, the agency has proposed rulemaking that would shift some PA-funded disaster response and recovery costs onto nonfederal partners.[262] Under the proposed rule, fewer hazards would receive PA, and as a result, fewer dollars would be transferred to Applicants. If the rule is finalized, SLTTs would bear greater responsibility for response and recovery costs, as determined by measures of their fiscal capacity. According to FEMA, this would allow the agency to focus its resources on the most severe incidents. According to some SLTT representatives, the proposed rule could strain their resources as they emerge from the pandemic and significantly reduce their capacity to prepare, mitigate, respond, and recover to ongoing hazards.[263]

PA faces signficant demands. FEMA proposes to curtail the program's deployment, while nonfederal entities note the strains they, too, face from recent disasters of historic cost and scale. The 117th Congress may consider if—and how—the PA Program should adapt.

[260] FEMA, *Disaster Relief Fund: Monthly Report as of February 28, 2021*, March 11, 2021, Fiscal Year 2021 Report to Congress, pp. 13, 23, https://www.fema.gov/sites/default/files/documents/fema_february-2021-disaster-relief-fund-report.pdf.

[261] See, for example, FEMA, "FEMA Climate Change Adaptation Policy Statement," 2011-OPPA-01, January 23, 2012, https://www.fema.gov/sites/default/files/2020-07/fema_climate-change-policy-statement_2013.pdf; CBO, *Hurricane Damage: Federal Budget*, pp. 1, 4, 11-14; U.S. Global Change Research Program is a research coordinating body that spans 13 federal agencies. See U.S. Global Change Research Program, Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, vol. 2 (Washington, D.C.: 2018), pp. 44-58, 66-68.

[262] FEMA, "Cost of Assistance Estimates."

[263] For further information and discussion, see comments for Proposed Rule on Cost of Assistance Estimates, available at https://www.regulations.gov/document/FEMA-2020-0038-0001/comment.

Appendix A. Snapshot of PA for COVID-19

On March 13, 2020, President Donald J. Trump declared an emergency under Section 501(b) of the Stafford Act in response to the COVID-19 pandemic.[264] The unprecedented unilateral, nationwide Stafford Act declaration simultaneously authorized PA in all U.S. states, territories, tribes, and the District of Columbia.[265] Subsequently, President Trump approved Stafford Act major disaster declarations reauthorizing PA for emergency protective measures for all 50 states, the District of Columbia, five territories, and the Seminole Tribe of Florida; President Joseph R. Biden subsequently issued a major disaster declaration for the Navajo Nation and the Poarch Band of Creek Indians.[266] Prior to the COVID-19 pandemic, no President had ever declared a major disaster for an infectious disease event[267] or mobilized the PA Program as a primary instrument to respond to a public health incident.[268]

Given the unique and ongoing nature of the COVID-19 pandemic, FEMA released several iterations of guidance specifying the emergency protective measures for which Applicants could receive PA reimbursement or direct federal assistance.[269] President Trump authorized PA for 75% of eligible costs. Eligible measures included eligible costs incurred for emergency medical care,[270] the purchase and distribution of food,[271] non-congregate medical sheltering[272] and other

[264] Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.; the President of the United States of America, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," Proclamation 9994 of March 13, 2020, 85 *Federal Register* 15337, March 18, 2020, https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf.

[265] CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Bruce R. Lindsay and Erica A. Lee. A similar but distinct case is that of President George W. Bush's emergency declarations for Hurricane Katrina evacuees for 44 states in 2005. FEMA, "Notice: Amendment to Notices of Emergency Declarations," October 13, 2006, 71 *Federal Register* 60554. See also CRS Report R42702, *Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay.

[266] Specific presidential declarations of major disaster for COVID-19 are listed on the FEMA, "COVID-19 Disaster Declarations" webpage, available at https://www.fema.gov/coronavirus/disaster-declarations (hereinafter FEMA, "COVID-19 Disaster Declarations"), and the FEMA "Disasters" webpage, available at https://www.fema.gov/disasters.

[267] Stafford Act emergencies were declared for West Nile Virus in New York and New Jersey in 2001, specifically for the costs of mosquito abatement. CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Bruce R. Lindsay and Erica A. Lee.

[268] More limited FEMA involvement in public health incidents outside of infectious disease events include water distribution efforts following the Elk River Chemical Spill in West Virginia in 2014 and evacuation of the Love Canal Chemical Site in 1978 and 1980. Ibid. For more information, see CRS Report R46326, *Stafford Act Declarations for COVID-19 FAQ*, by Elizabeth M. Webster, Erica A. Lee, and William L. Painter.

[269] For measures eligible since September 15, 2020, see FEMA, "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)," FEMA Policy FP 104-009-19, September 1, 2020, pp. 3-4, (hereinafter FEMA, "COVID-19 Pandemic: Work Eligible"), https://www.fema.gov/sites/default/files/2020-09/fema_policy_104-009-19_PA-eligibility-policy-covid.pdf. For measures eligible from January 20, 2020, through September 14, 2020, see FEMA, "Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures," https://www.fema.gov/sites/default/files/2020-09/fema_eligible-emergency-protecitve-measures-for-covid_fact-sheet_archived.pdf.

[270] See FEMA, "Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance," FEMA Policy FP 104-010-04, May 9, 2020, https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations; see also Version 2 at https://www.fema.gov/sites/default/files/documents/fema_public-assistance-covid-19-medical-care-v2-with-equity-job-aid_policy_3-15-2021.pdf.

[271] See FEMA, "Coronavirus (COVID-19) Pandemic: Purchase and Distribution of Food Eligible for Public Assistance," FEMA Policy FP 104-010-03, April 11, 2020, https://www.fema.gov/sites/default/files/2020-07/fema_covid_purchase-and-distributions-of-food_policy.pdf; CRS Report R46432, *Food Banks and Other Emergency Feeding Organizations: Federal Aid and the Response to COVID-19*, coordinated by Kara Clifford Billings.

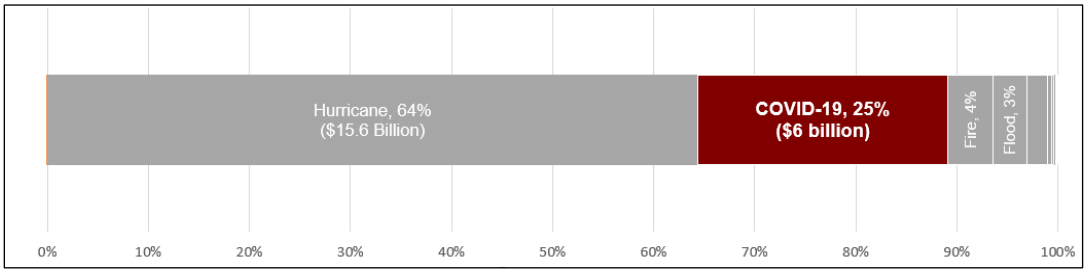
[272] See FEMA, "Coronavirus (COVID-19) Pandemic: Non-Congregate Sheltering," March 30, 2020,

response activities required as a result of the COVID-19 pandemic.[273] FEMA also utilized PA authorities to provide direct assistance for federal COVID-19 testing and PPE distribution efforts.[274] In November 2020, FEMA released additional guidance detailing the eligibility of PA funding or direct assistance for vaccine distribution, storage, and administration.[275]

PA obligations for the COVID-19 pandemic totaled approximately $6 billion in FY2020, according to publicly available FEMA data.[276] This represents approximately one-quarter of all PA expenditures for the fiscal year, according to FEMA (see **Figure A-1**). These obligations alone accounted for the second-largest share of PA obligations in FY2020, following obligations for hurricanes, particularly those that made landfall in 2017 (**Figure A-2**). As noted above, the DRF is a no-year account and makes obligations for disasters declared in prior and current years.

Obligations for the COVID-19 pandemic notably increased overall PA obligations in FY2020, during which FEMA reported the highest volume of PA obligations of any fiscal year to date.[277]

Figure A-1. FEMA-reported PA Obligations for FY2020 by Incident



Source: CRS analysis of OpenFEMA, "Public Assistance Funded Projects—Details," as of December 9, 2020.

Notes: Reflects sum of "federal share obligated" by incident. CRS cannot verify the accuracy of FEMA data.

https://www.fema.gov/sites/default/files/2020-07/fema_covid_noncongregate-sheltering-faq_factsheet.pdf.

[273] See FEMA, "COVID-19 Pandemic: Work Eligible," p. 4.

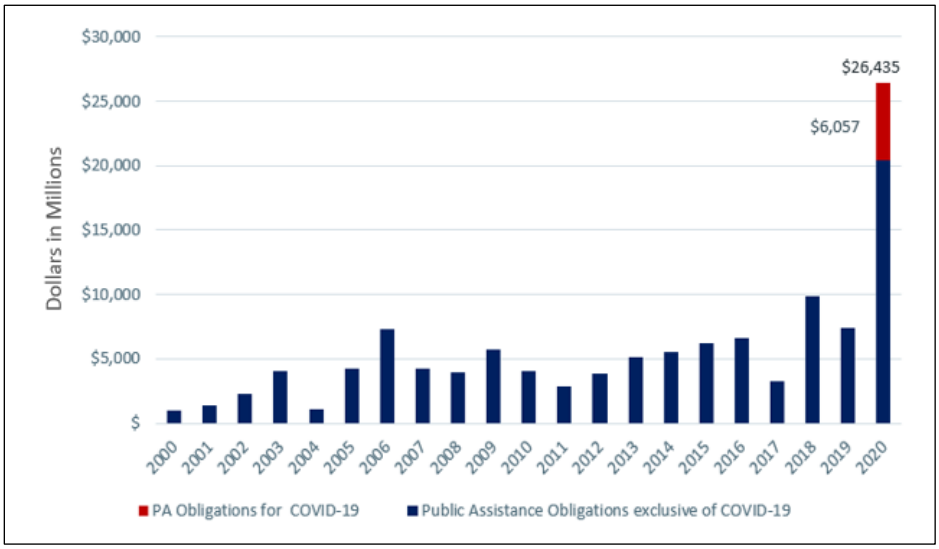
[274] See CRS Report R46481, *COVID-19 Testing: Frequently Asked Questions*, coordinated by Amanda K. Sarata and Elayne J. Heisler; CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire.

[275] FEMA, "COVID-19 Pandemic: Vaccination Planning FAQ," November 19, 2020.

[276] CRS analysis of OpenFEMA, "Public Assistance Funded Projects—Details," as of December 9, 2020.

[277] CRS analysis of FEMA obligations data provided directly to CRS by FEMA Office of Congressional and Legislative Affairs.

Figure A-2. FEMA-reported PA Obligations including COVID-19, FY2000-2020



Source: FEMA data on DRF Obligations, FY2000-FY2020 provided to CRS by FEMA Office of Legislative and Congressional Affairs, and PA obligations reported in FEMA, *Disaster Relief Fund Monthly Report*, November 6, 2020, p. 13.

Notes: CRS cannot reconcile discrepancies between FEMA obligations data provided to CRS directly from FEMA and publicly available data on PA obligations available through OpenFEMA.

On January 21, 2021, President Biden issued an Executive Order modifying several aspects of PA for COVID-19 Stafford Act declarations. The Executive Order specified that FEMA shall reimburse eligible Applicants, including courthouses and schools, for the costs of "safe opening and operation of eligible public and nonprofit facilities" during the pandemic.[278] The Executive Order also increased the federal cost share for Public Assistance for the costs of mobilizing the National Guard and for specific costs for the safe opening and operation of certain eligible public and nonprofit facilities to 100% through September 30, 2021.[279] The increased federal cost share for pandemic response and proposed expansion of PA-eligible costs for pandemic response is projected to significantly increase obligations in FY2021, according to FEMA.[280]

Congress may consider how the mobilization of PA throughout the country as a response program for the COVID-19 pandemic further enlarges the scope, purpose, and expense of the PA Program. Congress may also consider whether Stafford Act authorities were appropriate and sufficient to respond to the pandemic.

[278] President Joseph R. Biden Jr., *Memorandum to Extend Federal Support to Governors' Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States*, January 21, 2020, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/extend-federal-support-to-governors-use-of-national-guard-to-respond-to-covid-19-and-to-increase-reimbursement-and-other-assistance-provided-to-states/ (hereinafter President Biden, *Memorandum to Extend Federal Support*).

[279] President Biden, *Memorandum to Extend Federal Support.*

[280] FEMA, *Disaster Relief Fund: Monthly Report as of February 28, 2021*, March 11, 2021, Fiscal Year 2021 Report to Congress, pp. 4, 13, 23, https://www.fema.gov/sites/default/files/documents/fema_february-2021-disaster-relief-fund-report.pdf.

Appendix B. Public Assistance Reimbursement Process

PA funding procedures are complex and vary depending on a project's size, purpose, and approval under either standard procedures or the Alternative Procedures pilot program. In all cases, FEMA obligates funds to the Recipient after approving a PA project. The Recipient then disburses funds to the Applicant.

Small Projects

Small projects are obligated according to special procedures established in federal regulations.[281] According to these procedures, the Recipient may disburse funds to Applicants as soon as FEMA approves and obligates a small project (in FY2021, up to $132,800).[282] This process allows Applicants to use federal funds, as opposed to their own funds, to begin work on a project. FEMA may consider requests for additional funds to cover cost overruns resulting from eligible scope of work changes.[283] When the Applicant completes a project, the Recipient must certify that the Applicant completed the approved project in compliance with the FEMA-State agreement and that all payments were disbursed accordingly.[284] FEMA has recently implemented an Applicant "self-certification" process for small projects that reduces documentation burdens.[285] FEMA reported that it reduced application review time by 50%.

Large Projects

For larger projects executed under either standard or Alternative Procedures, Applicants generally receive reimbursement for costs paid for completed work (see **Figure B-1**).[286] FEMA obligates funds on the basis of project estimates to the Recipient, from whom the Applicant requests reimbursement for paid expenses.[287] As noted in the body of the report, Applicants generally need nonfederal funds to pay upfront costs before they may request and receive reimbursement.[288]

In limited circumstances, the Recipient may approve requests for cash advances to Applicants after FEMA has obligated funds under either standard or Alternative Procedures.[289] FEMA explains that such exceptional advances are limited to the minimum amounts needed, and are timed in accordance with the actual, immediate cash requirements documented in a procurement, contract, and cash needs timeline.[290] Additionally, Applicants may receive advances for emergency work (known as immediate needs or expedited funding). In these cases, Applicants

[281] 44 C.F.R. §206.205(a).

[282] 44 C.F.R. §206.205(a). FEMA defines project size based on an annually adjusted cost threshold. In FY2021, a small project is a project above $3,320 and equal to or less than $132,800. FEMA, "Per Capita Impact Indicator and Thresholds," https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator.

[283] FEMA, *PAPPG 2020*, pp. 199-200.

[284] FEMA, *PAPPG 2020*, pp. 199-200; 44 C.F.R. §206.205(a).

[285] Testimony of Former FEMA Administrator Jeffrey Byard, House T&I, *Recent Disasters*, pp. 143-144.

[286] 44 C.F.R. §206.205(a); and email from FEMA Congressional Affairs staff, September 10, 2020.

[287] 44 C.F.R. §206.205(b) and 2 C.F.R. §200.305.

[288] FEMA Office of Legislative and Congressional Affairs, email to CRS, September 10, 2020.

[289] See 44 C.F.R. §206.205(a)-(b) and 2 C.F.R. §200.305.

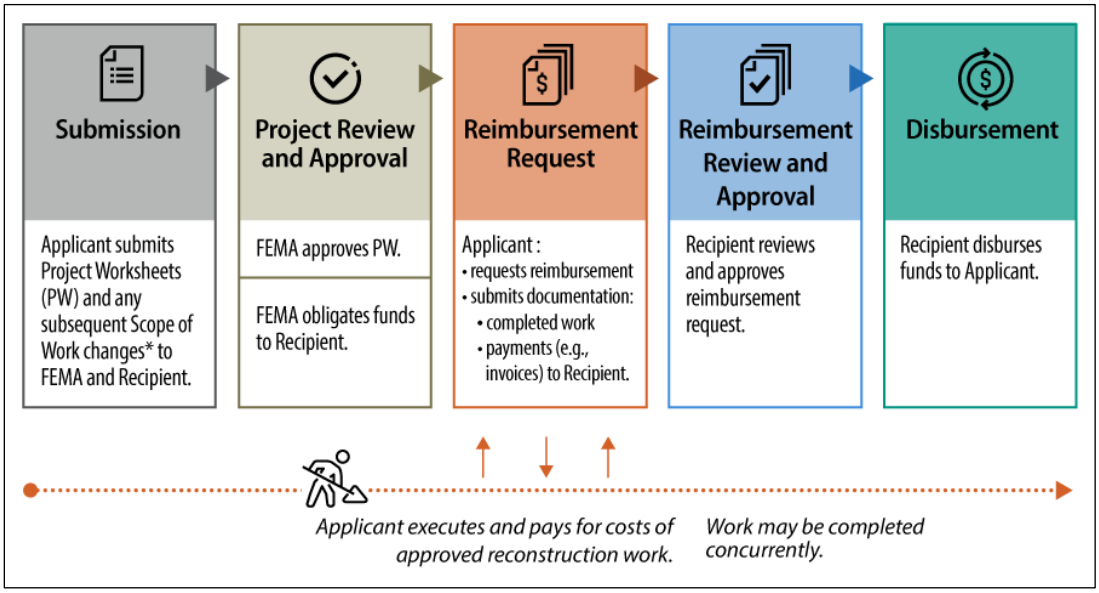
[290] 2 C.F.R. §200.305; email from FEMA Congressional Affairs staff, September 10, 2020.

may immediately receive up to half of the estimated costs of the project in order to respond to an immediate threat.[291]

Because PA is a reimbursement-based program, Applicants lacking capital to begin or advance large PA projects may struggle. GAO has found that this issue is of particular concern among Tribal Applicants, and the Government of Puerto Rico and FEMA reported similar challenges among Applicants strained by Puerto Rico's fiscal crisis.[292]

Figure B-1. FEMA's Public Assistance Reimbursement Process

For Large Projects



Source: §206.205(b); FEMA, *Public Assistance Program and Policy Guide*, FP 104-009-2, effective June 1, pp. 190-191.

Note: * Scope of Work changes generally do not enable Applicants to receive additional PA funds under capped awards, including projects completed under Alternative Procedures.

Awards for Actual Costs (Standard Procedures)

Under standard procedures, Applicants receive reimbursements for large projects on the basis of the actual costs of approved work. FEMA obligates PA awards based on a project estimate to the Recipient, and the Recipient disburses funds to the Applicant for approved costs.[293] FEMA may develop the estimate using the agency's Cost-Estimate Formula, or the Applicant may submit a

[291] See, for example, FEMA, "Expedited Funding for Public Assistance Projects," March 26, 2019, https://www.fema.gov/news-release/20200220/expedited-funding-public-assistance-projects.

[292] GAO, Emergency Management: Implementation of the Major Disaster Declaration Process for Federally Recognized Tribes, May 2018, GAO-18-443, p. 19, https://www.gao.gov/assets/700/691962.pdf; Government of Puerto Rico, 2020 Fiscal Plan, pp. 28-29.

[293] FEMA, *PAPPG 2020*, pp. 190-191; 44 C.F.R. §44 206.205(b). Awards over $1 million may be obligated according to Strategic Funds Management, under which FEMA will obligate funds as needed based on the project completion schedule. FEMA, *Strategic Funds Management—Implementation Procedures for the Public Assistance Program*, FEMA SOP 9570.24, December 2012, https://www.fema.gov/sites/default/files/2020-07/fema_9570.24_startegic-funds-mgmt_SOP_12-21-2012.pdf.

cost estimate prepared by a licensed professional.[294] If the award exceeds $1 million, FEMA generally obligates funds incrementally according to implementation procedures for *Strategic Funds Management.* FEMA will obligate funds to the Recipient in accordance with the needs of the Applicant's project schedule.[295] Once the Applicant has completed and paid for the project work, the Applicant submits a request for reimbursement to the Recipient, along with documentation of payment (see **Figure B-1**). The Recipient reviews the request and supporting documentation for compliance, completion, and accuracy. If compliant, the Recipient approves the request and disburses funds to the Applicant.

If the Applicant encounters delays, cost overruns, or the need to modify a project, the Applicant may request to change the scope of work.[296] The Applicant submits a description and justification of the change in the project's scope of work (including cost overruns) for the Recipient and FEMA's review.[297] If approved, FEMA obligates additional funds to the Recipient, as warranted. FEMA must provide prior approval for changes to be eligible.

Capped Grants

Unlike PA awards completed under standard procedures, capped grants are awarded on the basis of estimated costs. Cost overruns are the responsibility of Applicants. Under standard procedures, Applicants may request PA on a cost-share basis to cover cost overruns. Like PA awards for large projects under standard procedures, capped grants are provided on a reimbursement basis. In limited circumstances, Recipients may provide Applicants advance funds for immediate cash needs only, with documentation of a cash needs timeline and procurement calendar.[298]

Alternative Procedures

When completing projects under Alternative Procedures, Applicants may retain surplus funds if actual costs fall short of project cost estimates. These excess funds may be put towards specific uses, including additional eligible projects or mitigation measures (see **Figure 5**).[299] Conversely, Applicants are responsible for project costs that exceed the initial fixed-cost estimate, as noted above.

For debris removal under Alternative Procedures, FEMA may use a sliding scale to determine awards. On this basis, FEMA will reimburse a greater share of expedited debris removal work than work completed at a later date.[300]

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[294] FEMA, *PAPPG 2020,* pp. 185-187. FEMA, "Cost Estimating Tools," https://www.fema.gov/assistance/public/cost-estimating-tool.

[295] FEMA, *Strategic Funds Management Frequently Asked Questions,* https://www.fema.gov/sites/default/files/2020-09/fema_strategic_funds_management_faqs_02-24-15.pdf*;* FEMA, *Strategic Funds Management—Implementation Procedures for the Public Assistance Program,* SOP 9570.24, December 2012.

[296] 44 C.F.R. §206.204(e).

[297] 44 C.F.R. §206.204(e)(2).

[298] 44 C.F.R. §206.205(b) and 2 C.F.R. §200.305; FEMA Office of Legislative and Congressional Affairs, email to CRS, September 10, 2020.

[299] Stafford Act Section 428(c)(4) authorizes the provision of "financial incentives and disincentives for a State, tribal, or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance." 42 U.S.C. §5189f(c)(4). See also "Use of Excess Funds" in FEMA, "Public Assistance Alternative Procedures Guide for Permanent Work, FEMA-4339-DR-PR," February 10, 2020, pp. 16-18.

[300] Sandy Recovery Improvement Act of 2013, P.L. 113-2, January 29, 2013.

Improved Projects and Alternative Projects

Applicants may receive PA to complete projects other than the restoration of a facility based on its pre-disaster design. As noted earlier, Applicants may determine that an alternate project may better serve the affected community—for example, rebuilding an indoor school gym rather than restoring an underutilized equipment annex. In these cases, FEMA may provide PA for an alternate eligible facility. However, the award is capped at the federal share of the cost of repairing the original disaster-damaged facility to pre-disaster use, or the federal share of the actual costs of the alternate project, whichever is less.[301] The Applicant is generally responsible for costs that exceed those required to restore the original facility to pre-disaster use. The Stafford Act previously required that awards for alternate projects be reduced to 90% of the estimated award for the reconstruction of the original facility. However, DRRA eliminated this provision. Since 2018, Applicants completing alternate projects are eligible to receive the full federal share of the estimated cost to restore the original disaster-damaged facility.[302]

Applicants may also elect to complete an improved project. An improved project expands or otherwise improves upon the original pre-disaster function of the disaster-damaged facility (beyond the improvements required to comply with the highest available building standards). For example, as noted earlier, Joplin Schools elected to complete an improved project when Old South Middle School was destroyed in tornadoes that struck Missouri in 2011. Old South Middle School was sufficiently damaged that it qualified for the "50% rule": the costs of reconstruction exceeded 50% of the value of replacement, so Joplin Schools was eligible to receive PA sufficient to replace, rather than simply repair, the facility.[303] Rather than rebuild the damaged facility to pre-disaster design, Joplin Schools decided to relocate and replace it with an improved design. However, the award was capped on the basis of FEMA's estimate to reconstruct Old South Middle School.[304] Improved projects are capped at the lesser of either the estimated costs to reconstruct the original disaster-damage facility, or the actual costs of the improved project—whichever is less.[305]

[301] Section 406(c) of the Stafford Act, 42 U.S.C.§5172(c); 44 C.F.R. 206.203(d)(2); FEMA, *PAPPG 2020*, p. 164.

[302] Section 1207(a) of DRRA, P.L. 115-254, as it amends Section 406(c) of the Stafford Act, 42 U.S.C. §5172(c); FEMA, "Disaster Recovery Reform Act Public Assistance Program Amendments," fact sheet, July 2019, https://www.fema.gov/media-library-data/1565888669158-0ca15d4ade220a19e54313786ceb013d/DRRA_PA_Program_Amendments_FactSheet07_05_19-v3.pdf.

[303] 44 C.F.R. §206.226(f).

[304] FEMA, "Improved Project—PA ID# 097-U4T46-00," PA Appeals Database, Signed July 24, 2018, https://www.fema.gov/appeal/improved-project-5.

[305] FEMA, *PAPPG 2020*, p. 164.

Appendix C. Public Assistance Alternative Procedures Guidance Bibliography

As noted in the report, FEMA's Public Assistance Alternative Procedures operates as a pilot program and is not currently promulgated in regulations. Instead, FEMA has issued many iterations of general and disaster-specific guidance. A select bibliography of this guidance is listed below.

General Guidance

FEMA, *Public Assistance Alternative Procedures for Direct Administrative Costs (DAC)—Version 1.1*, June 12, 2018.

FEMA, *Public Assistance Alternative Procedures for Direct Administrative Costs (DAC)—Version 1*, October 25, 2017.

FEMA, *Public Assistance Alternative Procedures Pilot Program Permanent Work Cost Estimate Validation Job Aid*, May 20, 2013.

Permanent Work

FEMA, *Public Assistance Alternative Procedures Pilot Program for Permanent Work* (Version 4), August 29, 2019.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Permanent Work* (Version 3), March 29, 2016.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Permanent Work* (Version 2), December 19, 2013.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Permanent Work* (Version 1), May 20, 2013.

FEMA *Public Assistance Alternative Procedures Pilot Program—Permanent Work Standard Operating Procedures*, December 19, 2013.

PA Alternative Procedures DAC Project Worksheet Calculation Worksheet Template.

Debris Removal

FEMA, *Public Assistance Alternative Procedures Pilot Program for Debris Removal* (Version 7), June 28, 2019.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Debris Removal* (Version 6.1), June 28, 2018.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Debris Removal* (Version 5), June 28, 2017.

FEMA, *Public Assistance Alternative Procedures Pilot Program for Debris Removal* (Version 4), June 28, 2016.

FEMA, *Public Assistance Alternative Procedures Pilot Guide for Debris Removal* (Version 3), June 28, 2015.

FEMA, *Public Assistance Alternative Procedures Pilot Guide for Debris Removal* (Version 2), June 27, 2014.

FEMA, *PA Alternative Procedures Pilot Guide for Debris Removal* (Version 1), June 28, 2013.

Public Assistance Debris Removal Tips Fact Sheet.

Disaster-Specific Guidance

Hurricane Recovery—Puerto Rico

FEMA, *Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work*, *FEMA-4339-DR-PR,* February 10, 2020 (current), available at https://www.fema.gov/media-library-data/1583262552993-b50ff3154f0862787477db19493fcd10/PAAP_Guide_for_Permanent_Work_DR-4339-PR_V3_2-10-2020_FINAL_508.pdf.

FEMA, *Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program*, FEMA Recovery Policy FP-104-009-5, December 2019, https://www.fema.gov/media-library-data/1537374589131-e5048390675525d0bc84812759eba5fe/BBA_Policy_9-14-2018_508_FINAL.pdf.

FEMA, *Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work*, *FEMA-4339-DR-PR*, September 2019.

FEMA, *Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work*, *FEMA-4339-DR-PR,* April 2018.

Hurricane Recovery—U.S. Virgin Islands

FEMA, *Public Assistance Alternative Procedures (Section 428) Permanent Work Guide*, *FEMA-4340-DR-VI*, February 10, 2020 (current), https://www.fema.gov/media-library-data/1581363644436-d2b480482d86a6b01397d68d6080e404/PAAP_Guide_for_Permanent_Work_DR-4340-VI_V3_2-7-2020_FINAL_508.pdf.

FEMA, *Public Assistance Alternative Procedures (Section 428) Permanent Work Guide*, *FEMA-4340-DR-VI* (Version 2), September 2019.

FEMA, *Public Assistance Alternative Procedures (Section 428) Permanent Work Guide*, *FEMA-4340-DR-VI* (Version 1), September 15, 2018.

Appendix D. List of Acronyms

CBO	Congressional Budget Office
DFA	Direct Federal Assistance
DHS	Department of Homeland Security
DHS OIG	Department of Homeland Security—Office of Inspector General
DRRA	Disaster Recovery Reform Act of 2018
FEMA	Federal Emergency Management Agency
GAO	Government Accountability Office
PA	Public Assistance
PDA	Preliminary Damage Assessment
SBA	U.S. Small Business Administration
SLTT	State, local, tribal, or territorial government
SRIA	Sandy Recovery Improvement Act of 2013
USACE	U.S. Army Corps of Engineers

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Acknowledgments

Natalie Paris, Analyst in American Federalism and Emergency Management Policy, and William L. Painter, Specialist in Homeland Security and Appropriations, assisted in the structural development of the report and provided editorial comments and suggestions.

Diane Horn, Analyst in Flood Insurance and Emergency Management; Bruce R. Lindsay, Specialist in American National Government; Shawn Reese, Analyst in Emergency Management and Homeland Security Policy; Elizabeth M. Webster, Analyst in Emergency Management and Disaster Recovery; Sarah Lister, Specialist in Public Health and Epidemiology; and Lauren Stienstra, Section Research Manager, Federalism and Emergency Management, provided editorial comments and suggestions.

Maura Mullins, Senior Research Librarian, assisted with data audits and provided editorial comments and suggestions.

Mari Y. Lee, Visual Information Specialist, developed the figures included in this report. Jim C. Uzel, Geospatial Information Systems Analyst, and Nevean Nawar, former Geospatial Information Systems Analyst, developed the map included in this report.

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