FEMA'S PROPOSED RULE TO RESTRICT ACCESS TO DISASTER RESPONSE RESOURCES

States, territories, and tribal governments are currently eligible for FEMA Public Assistance (PA) to help respond to disasters. PA reimburses state and local governments and certain types of nonprofit organizations for the cost of disaster-related debris removal, emergency protective measures to protect life and property, and permanent repair work to damaged or destroyed infrastructure.

On December 14, 2020, FEMA announced a proposed rule that would prevent disaster-impacted states from receiving this assistance in the future. If implemented, disaster-impacted communities would be unable to access the federal resources needed to recover in all but very large disasters. The proposed rule would severely restrict access to resources at a time of increased disasters due to climate change and the ongoing COVID-19 pandemic.

The National Low Income Housing Coalition and the NLIHC-led Disaster Housing Recovery Coalition (DHRC) urges FEMA to withdraw several provisions of its proposed rule and instead work with Congress to ensure that the agency has all the tools and resources it needs to successfully fulfill its mission. Below is information on FEMA's proposed changes and how advocates can submit comments in opposition by the **February 12, 2021 deadline.**

CURRENT FEMA POLICY

To receive FEMA assistance, elected officials must first make a formal request to the President for their approval – a decision based largely on FEMA's recommendation. FEMA bases its recommendation on six factors, including the estimated cost of the assistance (COA). Other factors include: local insurance coverage, hazard mitigations, activated federal assistance, the number of recent disasters in the area, and the localized impacts of the disaster.

COA reflects the amount of assistance needed by a state after a disaster. To make its recommendation, FEMA divides the estimated total cost of assistance (based on joint FEMA-State Preliminary Damage Assessments) by the state population (based on the most recent decennial census). The statewide per capita cost must be greater than a nationwide per capita standard set by FEMA before the agency will recommend that the President grant a disaster declaration and make FEMA resources available to the state.

In addition to this measure, FEMA also requires states to meet a "minimum threshold" of needed assistance before the agency will recommend a federal response. The minimum threshold is currently set at $1 million – an amount so low that it rarely prevents a disaster from being declared.

PROPOSED CHANGES

The "Disaster Reform and Recovery Act (DRRA) of 2018" directed FEMA to review and update when the agency would recommend to a President to approve a disaster declaration request. The law specifically directed FEMA to evaluate the way it measures COA.

In its proposed rule, FEMA proposes three major changes that would significantly restrict access to disaster response and recovery resources. These changes include: (1) increasing the nationwide per capita indicator, (2) considering a state's Total Taxable Revenue (TTR), (3) increasing the minimum threshold of needed assistance.

Together, these changes would abruptly restrict access to federal resources before states and communities can reasonably build capacity, leaving residents at greater risk of disasters.

1. INFLATION

FEMA proposes to increase the nationwide per capita cost standard from a Fiscal Year (FY) 2019 value of $1.50 per capita to $2.32 per capita. FEMA argues that this would account for increases in inflation between 1986 and 1999. FEMA began using the per capita indicator system in 1986 and began incrementally increasing the indicator based on yearly inflation changes starting in 1999. There was no inflationary adjustment between 1986 and 1999.

FEMA argues that that the change would "[decrease] the number and frequency of disaster declarations, and [decrease] federal disaster costs." The agency claims the change would "better enable FEMA to achieve its readiness and preparedness missions because FEMA would be able to apply more attention and resources to large catastrophic incidents as less FEMA focus and resources would be needed for smaller incidents."

The DHRC opposes this change, which would:

- **Abruptly restrict access to FEMA resources:** The purpose of tying the per capita indicator to inflation is to compensate for gradual changes in the economy without resorting to large abrupt increases. Implementing 13 years of such increases at once defeat this purpose.
- **Leave states and local governments without necessary capacity.** Implementing this large increase does not provide state and local governments the time needed to boost their capacity to address disasters that had previously been eligible for federal assistance. State and local governments will be unable to quickly increase their emergency response capacity or allocate funds in anticipation of disasters.
- **Put survivors and communities at risk.** Implementing such an immediate multi-year increase during a time when state and local governments will continue to experience the effects of a worldwide, ongoing, pandemic, as well as an extraordinarily busy Atlantic Hurricane Season and West Coast wildfire season places future disaster survivors at risk. These survivors and their state and local governments will rely on federal government response where state capacity has either been depleted or is currently in use.

2. TOTAL TAXABLE REVENUE (TTR)

FEMA proposes to adjust the statewide per capita indicator based on a state's total taxable revenue (TTR). TTR is a publicly available estimate of the income flows produced within a state and the income of its residents that are potentially taxable. The estimation does not reflect the actual funds taxed by the state, but rather what *could potentially* be taxed.

FEMA argues that TTR is a more reliable indicator of state finances than measuring a state's Gross Domestic Product (GDP) or Total Annual Revenue (TAR). FEMA argues that using TTR would lead to fewer federal disaster declarations.

The DHRC opposes this change, which is:

- **Inaccurate.** TTR does not reflect the amount of financial resources a state currently has – it measures the potential financial resources a state could have if it taxed all sources. As such, it is not an adequate indicator of the state's current financial situation and its ability to quickly appropriate money to disaster impacted areas. TTR data is released two years after the measurement is taken – so it does not adequately show the current financial resources of a state.
- **Inconsistent.** TTR data is not published for territories, therefore FEMA would treat states and territories differently under the proposed change.
- **Not Required by Law.** While Section 1239 of DRRA, as well as several reports by the Government Accountability Office and U.S. Department of Homeland Security Inspector General, urge FEMA to implement some way of measuring a state's economy when weighing a request for PA, they do not specifically direct FEMA to adjust baseline per capita indicators by TTR.

3. MINIMUM THRESHOLD

FEMA proposes to increase the minimum threshold needed before a state could receive FEMA resources from a flat $1 million to $1.35 million for FY 2019.

FEMA argues that increasing the threshold would be a more accurate indicator of the least populous states' capabilities to respond to disasters, would "keep FEMA from expending resources and attention on incidents within the states' capabilities," and would "incentivize less populous states and territories to build their response and recovery capabilities and mitigate the hazards of future incidents."

The DHRC opposes this change, which would:

- **Abruptly restrict access to FEMA resources:** By seeking to implement over 20 years of gradual growth at once, FEMA negates the entire principle behind tying thresholds to inflation. The purpose of tying an indicator to inflation is to ensure that the threshold occurs naturally in tandem with the increase of the economy. Applying all retroactive increases at once would go against this purpose and prevent states that already have weak economic outlooks from having to rapidly prepare itself to navigate disasters without federal assistance.
- **Leave states and local governments without necessary capacity.** Raising the threshold in this way would negatively impact the least populous states and territories the hardest, and it would not provide state governments time to move funding and capacity to address the important work that FEMA had previously conducted during disasters.

HOW TO COMMENT

The DHRC urges advocates to submit comments opposing the proposed rule by the February 12, 2021 deadline.

You can submit comments electronically by going to the Federal eRulemaking Portal and searching Docket ID FEMA-2020-0038. You may also email comments to dhsdeskofficer@umb.eop.gov; the email should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency and be identified by the docket ID listed above. Comment authors should be sure to identify which portion of the rule each of their comments are referring to.

FEMA must collect, analyze, and respond to all comments to the proposed rule before issuing a final rule. Please note that all comments are public documents once submitted and will be accessible to the general public.

If you wish to submit a comment on this proposed rule and have any questions, please reach out to NLIHC Policy Analyst Noah Patton (npatton@nlihc.org) or NLIHC Policy Analyst Alayna Calabro (acalabro@nlihc.org).