February 10, 2021
Submitted via www.regulations.gov

Desk Officer for the Department of Homeland Security
Federal Emergency Management Agency
500 C St. SW
Washington, DC 20472

Regulatory Affairs
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Re: FEMA Docket ID FEMA-2020-0038 Comments in Response to Proposed Rulemaking: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance (PA) Program

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving socially just public policy that ensures people with the lowest incomes in the United States have affordable and decent homes. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal assistance.

NLIHC leads the Disaster Housing Recovery Coalition (DHRC) of more than 850 national, state, and local organizations, including many working directly with disaster-impacted communities and with first-hand experience recovering after disasters. The DHRC works to ensure that federal disaster recovery efforts reach all impacted households, including the lowest-income seniors, people with disabilities, families with children, veterans, people experiencing homelessness, and other at-risk populations who are often the hardest-hit by disasters and have the fewest resources to recover afterwards.

Some of the changes proposed by Federal Emergency Management Agency (FEMA) in the December 2020 notice of proposed rulemaking (proposed rule) would abruptly restrict access to FEMA resources, leaving states with little time to boost their capacity to address disaster recovery without federal assistance and placing disaster survivors and their communities at greater risk. In addition, the measurement proposed by FEMA to determine the economic status of states is inaccurate. While these modifications were prompted by a provision of the "Disaster Recovery Reform Act of 2018" (DRRA), that law only requires that FEMA evaluate its methods of calculating Cost of Assistance (COA); FEMA is not required to make these modifications.[1]

[1] DRRA Section 1239

The proposed changes would directly harm disaster survivors without actively increasing states' capacity for disaster recovery. Instead of putting disaster survivors at greater risk in an effort to spur state level capacity, FEMA should collaborate with other federal agencies, such as the U.S. Department of Housing and Urban Development (HUD) to deploy proven disaster housing solutions like the Disaster Housing Assistance Program (DHAP) and help build capacity at the state level to ensure that states are able to effectively respond to disasters.[2] The DHRC will continue to advocate for greater disaster recovery funding to ensure that FEMA can respond to such disasters in the interim.

I. FEMA should abandon its proposed adjustment of the nationwide per capita cost standard to account for a lack of inflationary adjustment from 1986 to 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."[3] The DHRC requests that this portion of the rule be abandoned as it would abruptly restrict access to FEMA and federal resources, leaving states and local governments without the necessary capacity to respond to disasters and placing disaster survivors and disaster-affected communities at risk.

a. This proposed adjustment would abruptly restrict access to federal disaster recovery resources.

One reason lawmakers and policymakers adjust program values and calculations to inflation is to allow for gradual changes over time that reflect the expansion or contraction of the overall economy. This allows state and local governments time to compensate for these changes gradually, adjusting their complimentary programs in tandem. Accounting for over 10 years of inflationary changes in one instance would dramatically raise the national per capita standard by 55%. Such a sharp change defeats the purpose of tying values to inflation and will surely create confusion and mismanagement as states have been denied the time to gradually compensate.

b. This proposed adjustment would leave state and local governments without necessary capacity to respond to disasters.

Implementing this large increase to the per capita standard does not provide state and local governments the time needed to boost their capacity to address disasters that would have previously been considered eligible for federal assistance. State and local governments will be unable to quickly increase their emergency response capacity in anticipation of disasters – which would require additional training, staff, and technical assistance that had previously been supplemented by FEMA. In addition, many state and local emergency management agencies are stretched thin by the ongoing coronavirus pandemic. These areas will depend on FEMA assistance and expertise to weather future disasters.

---

[2] GAO "Actions Needed to Address Gaps in Nation's Emergency Management Capabilities", GAO-20-297, (2020).
[3] 85 FRN 240, pg. 80726 (December 2020)

Implementing this change will force state and local governments to quickly find additional funding in their existing budgets to cover expected losses in federal assistance. As many state legislatures operate on a part-time basis, and with unique budgetary shortfalls due to the ongoing coronavirus pandemic, many states lack the ability to quickly bring their own assistance programs online in the wake of disasters and will result in inadequate recoveries. In addition, states will need to compensate for the lack of non-FEMA recovery programs, such as those offered by SBA, HUD, USAG, and other federal government agencies with programs that use Stafford Act declarations as triggers. Without a corresponding Stafford Act declaration, the status of these additional programs will be thrown into doubt, further increasing the burden on state and local governments.

c. *The proposed adjustment places disaster survivors and disaster-affected communities at risk.*

Implementing this change at this time will place disaster survivors at risk. State and local governments are experiencing the effects of an ongoing pandemic, and our nation's hurricane and wildfire seasons are magnified by the ongoing effects of climate change. 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. Without federal aid, low-income households – who already do not receive the amount of assistance they need to recover – will be further harmed by inadequate and piecemeal state responses to disasters that would have otherwise qualified for federal assistance.

II. FEMA should abandon its proposed inclusion of Total Taxable Revenue in the calculation of statewide per capita indicators.

FEMA argues that Total Taxable Revenue (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, allowing them to be more successful for the disasters to which they respond. The DHRC requests that this portion of the rule be abandoned as its implementation will create inaccurate and inconsistent indicators and is not required by law.

a. *This proposed change would result in inaccurate statewide per capita indicators.*

Implementing this change would create inaccurate statewide per capita indicators by attempting to utilize a theoretical value of a state's economy as an objective measurement of a state's capacity to respond to a disaster. TTR does not reflect the financial resources a state has – it measures the potential financial resources a state could access if it taxed all sources. As such, it is not an adequate indicator of the state's current and actual financial situation and its ability to quickly appropriate money to disaster impacted areas. In addition, TTR data is released two years after the measurement is taken. As a result, it does not adequately reflect a state's current financial resources. The current pandemic underscores the flaws in using this approach: a TTR taken in 2019 would not adequately describe the economic ability of a state in 2021 to afford its own recovery amid the current pandemic-created economic slowdown.

As a result of the implementation of this change, disaster survivors in states that have chosen to eschew certain tax resources would be subjected to an underfunded state-run disaster recovery. These state-level tax decisions are highly political and are often difficult to modify even in positive economic times. Such states would be unable to quickly raise the revenue needed to fully fund disaster recovery. This change places the most risk on low-income households – who already bear the brunt of disasters and receive the least amount of assistance afterward.

b. This proposed change would result in inconsistent statewide per capita indicators across the country.

TTR data is not published for territories, therefore the implementation of this change would result in FEMA treating states and territories differently. Many territories are exceptionally small or suffer from unique issues that do not exist during recovery efforts in the continental United States. Implementing this change will create confusion surrounding the ability of a territory to finance its own disaster recovery. At the very least, a uniform per capita indicator for a territory should be tied to the lowest TTR value reported for any of the states. This will ensure that territories receive the assistance they need to fully recover from a disaster without being punished for the decision to not measure TTR within their borders.

c. This proposed change is not required by law and is therefore unnecessary.

While Section 1239 of DRRA, as well as several reports by the Government Accountability Office and U.S. Department of Homeland Security Inspector General, have urged FEMA to implement some way of measuring a state's economy when weighing a request for PA, they do not directly require FEMA to adjust baseline per capita indicators by TTR. Instead of FEMA selecting another, similarly theoretical or inconsistent measure of a states ability to pay for disaster recovery costs on its own, FEMA should continue working with state and local emergency management agencies to boost capacity and prepare them to handle climate change-driven disasters in the future. Given the severe human and financial cost of the ongoing coronavirus pandemic, seeking to implement such a change – which would result in some states receiving triple digit increases to their statewide per capita thresholds – is inadvisable and would result in direct harm to the survivors of future disasters.

III. FEMA should abandon its proposed adjustment of the minimum threshold to account for inflation from 1999 to 2019.

FEMA argues that increasing the minimum threshold would be a more accurate indicator of the least populous states' ability 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."[4] While the DHRC understands that the minimum threshold is set to a low value and has not been updated for years, the DHRC requests that this portion of the rule be abandoned as this change would restrict access to FEMA and federal resources, leaving states

[4] 85 FRN 240, pg. 80729 (December 2020)

and local governments without the necessary capacity to respond to additional disasters and placing disaster survivors and disaster-affected communities at risk.

a. This proposed adjustment would abruptly restrict access to federal resources.

By seeking to implement over twenty years of gradual growth at once, FEMA negates the entire principle behind tying thresholds to inflation. One main purpose of tying an indicator to inflation is to ensure that the threshold occurs naturally and in tandem with yearly economic increases. Applying more than twenty years of increases at once is a jarring change that goes against this objective. This will create confusion and mismanagement as states are forced to rapidly respond to this abrupt change in federal policy.

b. This proposed adjustment would leave state and local governments without necessary capacity to respond to disasters.

Implementing this large increase in the minimum threshold does not provide adequate time for state and local governments to evaluate and boost state and local capacity to address disasters that would have previously been eligible for federal assistance. It is unlikely that states can meet the challenge of additional disasters without large boosts in capacity; this is especially true during a pandemic. It is unrealistic to expect states to immediately increase capacity.

Implementing this change will force state and local governments to quickly find additional funding in their existing budgets to cover the expected loss in federal assistance. States are unable to quickly accomplish this in the near-future due to ongoing fiscal effects of the pandemic and the time constraints of maintaining only part-time legislatures – leaving states unable to move around large sections of their budget during the majority of the year. As stated earlier in these comments, disaster declarations issued under the Stafford Act also serve as triggers for a wide variety of other disaster recovery programs offered by agencies outside of FEMA such as USAG, HUD, and the SBA. The lack of access to these federal programs will only increase the need for state-level assistance and amplify the capacity challenges created by a state-only disaster response.

c. The proposed adjustment places disaster survivors and disaster-affected communities at risk.

Implementing this change during a time when state and local governments are suffering ongoing fiscal and public health effects from the ongoing pandemic, as well as an extraordinarily strong Atlantic Hurricane and West Coast Wildfire season will place disaster survivors at risk during worsening, climate change-driven, future disasters. Survivors and their state and local governments will rely on federal government response where state capacity has either been depleted or is already in use. Without aid from FEMA and other agency's disaster recovery programs, low-income survivors – who already do not receive the amount of assistance they need to recover – will be further ignored and harmed by inadequate and piecemeal state responses to disasters that would have otherwise qualified for federal disaster assistance.

IV. Conclusion

The proposed changes described above would abruptly restrict access to FEMA resources, leaving states with little time to boost their capacity and placing disaster survivors and their communities at greater risk. While these modifications were prompted by a provision of DRRA, that law only requires that FEMA evaluate its methods of calculating COA – FEMA is not required to make such changes at this time.

Instead of taking these actions, FEMA should work with other federal agencies, such as HUD, to streamline response to disaster recovery and build capacity at the state level to provide for a gradual transition of responsibility that does not place survivors at risk.

Thank you in advance for your attention to these comments. We hope that together we can move towards a reformed disaster recovery system that lessens disaster risk and provides all survivors with the assistance they need to recover.

Please do not hesitate to contact NLIHC Vice President of Policy, Sarah Saadian, ssaadian@nlihc.org, if you need additional information.

Sincerely,

Diane Yentel
President and CEO, National Low Income Housing Coalition