NATURAL RESOURCES DEFENSE COUNCIL

American Rivers
Rivers Connect Us

Adrian Sevier
Federal Emergency Management Agency
Office of Chief Counsel
Regulatory Affairs Division
500 C Street S.W.
Washington, D.C. 20472

Re: Public Comments on Establishing a Deductible for FEMA's Public Assistance Program; Docket ID FEMA-2016-0003

Dear Mr. Sevier:

The Natural Resources Defense Council (NRDC) and American Rivers appreciate the opportunity to provide comments on the Federal Emergency Management Agency's (FEMA) proposal to establish a deductible for the Public Assistance program.

NRDC is an international nonprofit environmental organization with more than 2 million members and online activists. Our organization works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. Our organizational goals include curbing global warming, safeguarding human health, and ensuring safe and sufficient water for people and the environment.

American Rivers protects wild rivers, restores damaged rivers, and conserves clean water for people and nature. Since 1973, American Rivers has protected and restored more than 150,000 miles of rivers through advocacy efforts, on-the-ground projects, and an annual America's Most Endangered Rivers ® Campaign. Headquartered in Washington, DC, American Rivers has offices across the country and more than 250,000 members, supporters, and volunteers.

Extreme weather events that cause catastrophic damage, including prolonged high temperatures, droughts, floods, and heavy rain storms, are occurring more frequently and at greater magnitude.[1] The potential for damage, loss of life, and environmental degradation are increasing in tandem. As the climate changes, every region of the United States will be more susceptible to the impacts of natural disasters. Coupled with population growth, expanding community development, and the loss of natural ecosystem functions in areas that are vulnerable to natural disasters, the costs associated with natural disasters are projected to rise. These costs are increasingly being borne by the Federal government. According to a study conducted by the National Academy of Sciences, the Federal share of disaster aid

[1] NOAA National Centers for Environmental Information (NCEI), *U.S. Billion-Dollar Weather and Climate Disasters* (2017) https://www.ncdc.noaa.gov/billions/time-series (last visited Apr. 12, 2017).

following major tropical cyclones has climbed from 6 percent (Hurricane Diane, 1955) to more than 75 percent (Hurricane Sandy, 2012).[2]

Ultimately, the Federal government cannot be expected to bear such a disproportionate burden for disaster response. This is an unsustainable practice, particularly considering the impacts of climate change. All levels of government must adopt measures and policies that will make the nation more resilient. The deductible concept for the Public Assistance program has the potential to move the United States toward this goal.

NRDC and American Rivers support establishing a deductible for FEMA's Public Assistance program as a novel approach for incentivizing greater State preparedness for and resilience to future disasters. As the primary intent of the deductible concept is to incentivize resilience,[3] the credit structure must emphasize pre-disaster mitigation and preparedness. We believe FEMA should give the most credit to those activities that reduce risk in the long-term. FEMA should not provide credit for activities solely associated with post-disaster recovery that neither reduces a State's disaster risk nor reduces the cost of future disasters to the Federal government.

I. Current Structure of the Public Assistance System is Unsustainable: Deductible Concept Will Incentivize Change

a. Past Trends, Extreme Weather, and Future Costs

Maintaining the status quo concerning Federal disaster assistance and response is unsustainable in the long-term. Each year, extreme weather events and other natural disasters cost taxpayers billions of dollars in damage. In 2016 alone, 103 disasters were declared,[4] with over $1 billion in Public Assistance grants obligated.[5]

Major Disaster declarations are increasing. Between 2004 and 2013, 32% more presidentially declared disasters occurred than during the preceding 10 fiscal years.[6] This trend has resulted in increased Federal disaster assistance expenditures.

As the climate changes, the United States will become more vulnerable to the impacts of extreme weather. Extreme heat, droughts, heavy downpours, and floods will become more common. The costs

---

[2]Richard A. Luettich, Jr et al, National Research Council, *Reducing Coastal Risk on the East and Gulf Coasts* 20 (2014).

[3] Establishing a Deductible for FEMA's Public Assistance Program, 82 Fed. Reg. 4064, 4064 (Jan. 12, 2017).

[4] Federal Emergency Management Agency, *Disaster Declarations for 2016* https://www.fema.gov/disasters/grid/year/2016?field_disaster_type_term_tid_1=All (last visited April 12, 2017) (This figure represents Major Disaster Declarations, Emergency Declarations, and Fire Management Assistance Declarations).

[5] Federal Emergency Management Agency, *FEMA Public Assistance Funded Projects Summary - Open Government Initiative* https://www.fema.gov/media-library/assets/documents/28344?fromSearch=fromsearch&id=6299 (last visited April 12, 2017).

[6] US Government Accountability Office, GAO-15-424, *Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States* 1 (2015).

of extreme weather events will increase as these once "rare" events potentially become more common and intense.[7]

Climate change "presents a significant financial risk to the Federal government."[8] The Government Accountability Office lists the fiscal exposure due to climate change as a high risk faced by the United States. Per a 2013 analysis of disaster relief appropriations by the Congressional Research Service, the amount of inflation adjusted disaster relief per fiscal year has increased from a median of $6.2 billion per year (2000-2006) to $9.1 billion (2007-2013), a 46% increase.[9]

As noted above, the Federal share of disaster expenses has increased in recent decades. There is now an expectation by State and local governments that the Federal government will cover the costs of post-disaster recovery.[10] According to a recent report by the Government Accountability Office, natural disasters did not have a significant effect on State finances because States relied on the Federal government to provide most of the funding for disaster recovery. [11] Additionally, there is concern that State and local governments will not make adequate investments in disaster preparedness or discourage development of vulnerable areas because there is underlying belief that the Federal government will largely cover any losses.[12]This trend must change if resilience is be achieved on a national level.

The best way to reduce the potential impacts of climate change and natural disasters in general is to enhance preparedness and resilience. By establishing the proposed deductible concept for the Public Assistance program, FEMA creates an incentive for States to do more to increase their resiliency and that of their communities.

b. Disaster Deductible Preferable Over the Alternative (Section VI. A – Increasing Per Capita Indicator)

The Public Assistance deductible is preferable to the proposed alternative of changing the Public Assistance per capita indicator. While raising the per capita indicator to fully account for inflation and changes in per capita personal income would decrease the financial exposure of the Federal government to future disasters, the level of disaster risk faced by the nation would remain the same. Increasing the per capita indicator would simply shift costs from the Federal government to State governments, without a clear connection to how shifting costs would foster additional preparedness and resiliency actions at the State level.

In contrast, the deductible concept could improve disaster resilience nationally if State governments, in exchange for implementing measures that make them more resilient or capable of responding to future disasters, could receive a reduction on their deductible. This approach provides an incentive to State

[7] US Government Accountability Office, GAO-17-317, *High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others* 150 (2017).
[8] *Id*.
[9] *Id.*at 150-151.
[10] Luettich, Jr et al, *supra* note 2 at 67.
[11] US Government Accountability Office, *Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States, supra* note 8 at 17.
[12] Luettich, Jr et al, *supra* note 2 at 67.

governments to act. Linking the enactment of mitigation measures with a reduction in the deductible provides upfront, tangible cost savings to the recipient.

However, the primary focus of the disaster deductible should be to increase State investment in pre-disaster mitigation strategies, not solely on enhancing States' post-disaster recovery programs and resources. While the latter will help reduce costs for the Federal government it does not equate to risk reduction, which can only be achieved through pre-disaster mitigation.

Pre-disaster mitigation efforts are proven to reduce the associated costs of post-disaster recovery. The benefit-cost ratio of FEMA Hazard Mitigation grants is illustrative of this assertion: every dollar spent on a FEMA hazard mitigation grant produced, on average, four dollars of benefits--a significant return on public dollar expenditures.[13] For floods, the average benefit increases to five dollars for every dollar invested.[14] The benefits of hazard mitigation are the avoided losses, ones that would have occurred if mitigation had never been implemented. For example, elevating or floodproofing a structure above the height of a 100-year flood provides an increased level of protection against potential errors, oversights, or changes in flood conditions, and the avoided flood damages usually offset the increased cost of construction, especially in the face of sea level rise.[15]

II. The Proposed Credit Structure (Section V. G.) Requires Revision to Achieve Meaningful State Investments in Preparedness and Resiliency

a. Dedicated Funding for Emergency Management/Recovery Activities

While FEMA should encourage States to be prepared for disasters, dedicated disaster relief funds should not be considered as a credit category. The intended outcome of this proposal is to incentivize States to make meaningful improvements in mitigating current and future disaster risk. A dedicated disaster relief fund helps a State recover post-disaster, but does not reduce exposure to future disasters. The purpose of the disaster deductible versus simply increasing the per capita indicator is to incentivize preparedness and risk reduction. This credit category would not achieve that goal.

While FEMA proposes to cap this credit category at 20%, combined with the following proposed credit category (Expenditures for Non-Stafford Act Responses and Recovery Activities), States could reduce their disaster deductible by 40% using the same pot of money. For example, if a State establishes a rainy day fund and then uses that fund to respond to a non-Stafford act disaster, the State would receive double credit under the current proposed credit structure. This outcome is not sustainable as it neither reduces a States' disaster risk nor reduces the cost of future disasters to the Federal government.

---

[13] A. Rose, et al. *Benefit-cost analysis of FEMA Hazard Mitigation Grants* 8 Natural Hazards Rev. 97, 97-98 (2007) *available at* http://research.create.usc.edu/cgi/viewcontent.cgi?article=1014&context=published_papers
[14] Id.
[15] *See generally* Federal Emergency Management Agency, *2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas Draft* (2016)(evaluating the benefits of elevation and floodproofing for public buildings).

Currently, many States have statewide disaster accounts. These accounts are typically funded through general fund revenue at the start of the fiscal year.[16] However, States typically do not fund these reserves for future disasters.[17] States with supplemental pre-funded rainy day funds rarely tapped these funds to respond to a disaster because their state could generally provide disaster funding from a combination of general fund revenues and spending reductions in other areas.[18] Thus, even if a State had a pre-funded disaster relief fund there is no guarantee that it would be utilized. Therefore, it is entirely inappropriate for FEMA to grant credit to a state for having such a rainy day fund or disaster reserve fund.

b. Expenditures for Non-Stafford Act Responses and Recovery Activities

FEMA should not provide credit for State expenditures for non-Stafford Act response and recovery activities. NRDC and American Rivers acknowledge that "for every major disaster declared that there are multiple smaller incidents that do not rise to the level of warranting supplemental Federal Assistance, but nonetheless exceed local capabilities and often require State funding for response and recovery activities."[19] However, these events are and should remain a State responsibility.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) defines the role of the Federal government during a disaster, including the provision of disaster assistance to State governments.[20] According to the Stafford act, the President can declare a major disaster if the severity and magnitude of an effective response is beyond the capabilities of the State and local governments and that Federal assistance is necessary.[21] If the President does not declare a major disaster, then a determination has been made that the State is capable of an effective disaster response.

The provision of $1.00 in deductible credit for every $1.00 of annual State funding that the State expends to respond and/or recover from a non-Stafford Act incident shifts costs to the Federal government that should remain with the States. This cost transfer is contrary to the impetus behind the creation of the deductible to reduce disaster costs to the Federal government. Additionally, the provision of this credit does not incentivize greater State resilience to future disasters as these expenditures solely focus on post-disaster recovery, not pre-disaster preparedness and mitigation. This credit category fails to create a "financial and economic incentive for meaningful State investments in preparedness and risk-reduction measures."[22]

---

[16] US Government Accountability Office, *Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States, supra* note 8 at 9.
[17] *Id*. at 1.
[18] Id.
[19] Establishing a Deductible for FEMA's Public Assistance Program, 82 Fed. Reg. at 4076.
[20] US Government Accountability Office, Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States, supra note 8 at 6.
[21] Id.
[22] Establishing a Deductible for FEMA's Public Assistance Program, 82 Fed. Reg. at 4075.

c. Expenditures for Mitigation Activities

NRDC and American Rivers support the $3.00 in deductible credit for every $1.00 in State spending on qualifying mitigation activities independent of Federal assistance programs' cost-share requirements. FEMA should not cap the potential mitigation credit to encourage States to prioritize the funding of mitigation activities over other potential credit categories to satisfy the deductible. We agree investments in mitigation activities could help the State achieve future cost savings by reducing the impact of forthcoming disasters.

FEMA should prioritize non-structural and nature based options (e.g. buyouts) by providing more credit for these actions than grey infrastructure options. The use of nature-based approaches to manage flood water allows floodplains to act as a buffer by providing ample room to accommodate flood water which will in turn help to keep communities safe and reduce repeated disaster assistance expenses to rebuild risky development. Across the country, these approaches have been proven to be effective in reducing flood damage while providing many other benefits to communities.

Nonstructural and nature-based approaches to managing water resources work with natural river processes and are generally more cost effective and sustainable than traditional structural approaches. It has been calculated that nonstructural activities such as acquisitions and relocation of structures in the floodplain have a 5 to 1 return on investment.[23] Such measures also avoid the risks of catastrophic failure and overtopping created by structural projects like levees and floodwalls.

Non-structural and nature based solutions provide additional benefits such as clean water, fish and wildlife habitat, recreational opportunities, sustainable economic development, and an increased ability for people and wildlife to adapt to climate change. Thus, they not only help to protect people and properties, but also the environment.

d. Insurance Coverage for Public Facilities, Assets and Infrastructure

We support credit for insurance coverage for public facilities, assets, and infrastructure. States should take responsibility for insuring their own assets rather than relying on federal assistance to rebuild vulnerable infrastructure in the wake of a disaster. This credit category will incentivize States to prepare themselves financially for future disasters, reducing the post-disaster recovery costs to the Federal government.

Currently, State governments that receive Public Assistance grants to repair damaged assets in the aftermath of a disaster are required to subsequently insure those assets. For example, in the aftermath of a flood disaster, Public Assistance grant recipients are legally required to maintain flood insurance coverage (either through the NFIP, a private policy, or they can certify that they are self-insured).[24] Through the National Flood Insurance Program, public assets can be insured up to $500,000 + $250,000

[23] Rose, *supra* note 13 at 102-103.
[24] Federal Emergency Management Agency, FP 206-086-1, *Public Assistance Policy on Insurance available at* https://www.fema.gov/media-library-data/1436442397459-a1a4197f9528308d6d190ceb14418327/FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf

for contents. While this is unlikely to cover the full cost of the building or facility, it would help defray the amount of Federal assistance provided post-disaster.

However, States should not wait until after the first disaster strikes to obtain insurance coverage for public assets. If a state or community wants to repair a public building, facility, or infrastructure using FEMA's post-disaster Public Assistance grants, the amount of the grant will be reduced by the amount the owner would have received if they had purchased coverage. Already, there is a clear incentive for States to insure public facilities, assets, and infrastructure prior to being damaged in a disaster. Thus, FEMA should emphasize this credit provision as a good option for States to reduce their disaster deductible.

e. Building Code Effectiveness Grade Schedule

NRDC and American Rivers strongly support the Building Code Effectiveness Grade Schedule (BCEGS) credit category. We agree with the following statement:

> [*M]odel building codes have most clearly addressed the hazards associated with wind, earthquake, and fire. Experts maintain that buildings constructed according to the requirements of model building codes suffer fewer losses from those perils.*

We like FEMA's proposal to include an escalating credit structure that provides moderate incentive to simply participate in the ISO's BCEGS program and increasing incentives as States reach higher levels of adoption and enforcement. The latter is particularly important for achieving risk reduction. While adoption of modern building codes is a vital step toward disaster risk reduction, it is the enforcement of building codes that ensures disaster risk reduction is being achieved. FEMA has proposed to validate a portion of the credits that States are approved each year.[25] As part of this validation process, FEMA should require documentation that proves States are adequately enforcing their building codes for which they receive BCEGS credit.

f. Tax Incentive Program

NRDC and American Rivers are supportive of this credit category, but only if credit is provided for tax incentives designed to encourage preparedness and mitigation. The emphasis should be on pre-disaster mitigation actions. However, if a State provides a tax incentive post-disaster then only activities that achieve risk reduction should be counted. For example, an income tax credit for elevating a house would satisfy this criterion, however, a tax credit for simple casualty loss would not satisfy this criterion. As FEMA has mentioned, there must be a clear nexus with preparedness, mitigation, and resilience building. As such, FEMA should provide guidance to the States on the types of programs that would satisfy this requirement to avoid the possibility that tax incentives associated with post-disaster recovery activities that do not achieve mitigation and resilience are not counted for credit.

[25] Establishing a Deductible for FEMA's Public Assistance Program, 82 Fed. Reg. at 4084.

g. Expenditures on State Emergency Management Programs

We support State dedicated funding for Emergency Response/Recovery programs. States must be encouraged to allocate their own resources to their emergency management programs beyond any cost-share requirement of a Federal assistance program or grant. For example, States should receive credit for providing funds that go beyond the matching requirements of the CAP-SSSE grant (to coordinate the NFIP), which could help expand the annual audits of NFIP communities within their jurisdictions to ensure compliance with the minimum criteria of the NFIP.

III. Investment in Pre-Disaster Mitigation is the Goal

While it is important that State governments take on greater financial responsibility in responding to disasters to ease the burden on the Federal government, the main goal of the deductible proposal should be to increase investment in mitigation strategies. In contrast to simply increasing the per capita indicator, the deductible proposal would best achieve this goal. The long-term benefits of enhancing resiliency are protection of people and property and the reduction of future losses. NRDC and American Rivers recommends that FEMA move forward with implementing the deductible for the Public Assistance program.

Sincerely,

Joel Scata
NRDC
Project Attorney, Water Program

Meghan Boian
American Rivers
Associate Director, Policy & Government Relations