

# Disaster Declaration Process and Federal Disaster Assistance

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This paper explains the declaration process and provides an overview of the assistance available.

State, local, tribal and territorial governments share the responsibility for protecting their citizens from disasters, and for helping them to recover when a disaster strikes. In some cases, a disaster is beyond the capabilities of the state, local, tribal and territorial governments to respond.

In 1988, the Robert T. Stafford *Disaster Relief and Emergency Assistance Act*, 42 U.S.C. §§ 5121-5207, was enacted to support state, territory, tribal, and local governments and their citizens when disasters overwhelm them. This law, as amended, establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal Government, and sets the conditions for obtaining that assistance. The Federal Emergency Management Agency (FEMA), part of the Department of Homeland Security, is tasked with coordinating the response.

## The Disaster Declaration Process

The Stafford Act (§401) requires: “All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State or Tribal Chief Executive of the affected Indian tribal government.” A state also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance under the Compact of Free Association. The Governor or Tribal Chief Executive’s request is made through the FEMA Regional Office. Federal, state, local, tribal and territorial officials conduct a joint Preliminary Damage Assessment (PDA) to estimate the extent of the disaster and its impact on individuals and public facilities. The PDA team is comprised of personnel from FEMA, the state’s emergency management agency, territorial, tribal, county, and local government officials and the U.S. Small Business Administration. The team’s work begins with reviewing the types of damage or emergency costs incurred by the units of government, and the impact to critical facilities, such as public utilities, individuals’ homes and businesses. This assessment includes the number damaged, the number of people displaced, and the threat to health and safety caused by the storm event. Additional data from other local voluntary agencies may also be reviewed. During the assessment, the team will collect estimates of the expenses and damages. This information is included in the Governor or Tribal Chief Executive’s request to show that the disaster is of such severity and magnitude that effective response is beyond the combined capabilities of the state, local, tribal and territorial governments and that Federal disaster assistance is necessary. Normally, the PDA is completed prior to the submission of the Governor or Tribal Chief Executive’s request. However, per 44 Code of Federal Regulations §§ 206.33(d) and 206.36(d), the requirement for a joint PDA may be waived for those incidents of such unusual severity and magnitude that formal



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field damage assessments are not required to establish the need for supplemental federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). When a severe or catastrophic event occurs, the Governor or Tribal Chief Executive’s request may be submitted prior to the PDA. The Governor or Tribal Chief Executive must still make the request.

As part of the request and a prerequisite to assistance under the Stafford Act, the Governor or Tribal Chief Executive must take appropriate action under state or tribal law and direct the execution of the state or tribal emergency plan. The Governor or Tribal Chief Executive shall furnish information on the nature and amount of state and local or Indian tribal government resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the Governor or Tribal Chief Executive will need to certify that, for the current disaster, state and local or Indian tribal government obligations and expenditures will comply with all applicable cost-sharing requirements.

Federal disaster law restricts the use of arithmetic formulas or other objective standards as the sole basis for determining the need for federal supplemental aid. As a result, FEMA assesses a number of factors to determine the severity, magnitude, and impact of a disaster event. Primary Factors Considered Include:

Public Assistance Factors	Individual Assistance Factors
<ul style="list-style-type: none"> <li>• Estimated cost of the assistance;</li> </ul>	<ul style="list-style-type: none"> <li>• State Fiscal Capacity and Resource Availability;</li> </ul>
<ul style="list-style-type: none"> <li>• Localized impacts;</li> </ul>	<ul style="list-style-type: none"> <li>• Uninsured Home and Personal Property Losses;</li> </ul>
<ul style="list-style-type: none"> <li>• Insurance coverage in force;</li> </ul>	<ul style="list-style-type: none"> <li>• Disaster Impacted Population Profile;</li> </ul>
<ul style="list-style-type: none"> <li>• Hazard mitigation;</li> </ul>	<ul style="list-style-type: none"> <li>• Impact to Community Infrastructure;</li> </ul>
<ul style="list-style-type: none"> <li>• Recent multiple disasters; and</li> </ul>	<ul style="list-style-type: none"> <li>• Casualties; and</li> </ul>
<ul style="list-style-type: none"> <li>• Programs of other Federal assistance.</li> </ul>	<ul style="list-style-type: none"> <li>• Disaster Related Unemployment.</li> </ul>

Based on the Governor or Tribal Chief Executive’s request, the President may declare that a major disaster or emergency exists, thus activating an array of Federal programs to assist in the response and recovery effort.

## Federal Disaster Assistance

Not all programs, however, are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment and any subsequent information that may be discovered.

FEMA disaster assistance falls into three general categories:

- **Individual Assistance** – aid to individuals and households;
- **Public Assistance** – aid to public (and certain private non-profit) entities for certain emergency services and the repair or replacement of disaster-damaged facilities;

- **Hazard Mitigation Assistance** – funding for measures designed to reduce future losses to public and private property.

Some declarations will provide only individual assistance or only public assistance. Hazard mitigation opportunities are assessed in most situations. A summary of each of these programs follows. Because program complexities require lengthy explanations, the discussion that follows is simply an overview.

## Individual Assistance

### INDIVIDUALS AND HOUSEHOLDS PROGRAM

The Individuals and Households Program (IHP) provides up to \$36,000 (FY 2021) for financial assistance for Housing Assistance and \$36,000 (FY 2021) for Other Needs Assistance financial help to those who have necessary expenses and serious needs if they are unable to meet the needs through other means. In addition, FEMA may provide Direct Assistance to individuals or households who, because of a lack of available resources, are unable to make use of financial temporary housing assistance. When a disaster occurs, IHP provides grant money and services to people in the declared area whose property has been damaged or destroyed and whose losses are underinsured or not covered by insurance. In every case, the disaster survivor must register for assistance and establish eligibility. Disaster survivors may call FEMA toll-free at 800-621-3362 (TTY: 800-462-7585) to register for assistance or check their application status. Those who use a relay service such as a videophone, InnoCaption or CapTel should update FEMA with their specific number assigned to that service. Applicants may also register on-line at [www.disasterassistance.gov](http://www.disasterassistance.gov). FEMA (or the providing agency) will verify eligibility and need before assistance is offered.

### WHAT TYPES OF ASSISTANCE ARE PROVIDED?

The IHP has two provisions: Housing Assistance and Other Needs Assistance. The IHP - Housing Assistance (HA) (including Temporary Housing, Repair, Replacement, and Semi-Permanent or Permanent Housing Construction) assures that people whose homes are damaged by a disaster have a safe place to live. The IHP - Other Needs Assistance (ONA) (including personal property and other items) provides financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. These programs are designed to provide funds for expenses that are underinsured or not covered by insurance. They are available only to homeowners and renters who are United States citizens, non-citizen nationals, or qualified aliens affected by the disaster. The following is a list of the types of assistance available through this program and what each provides.

### Housing Assistance (HA)

- **Temporary Housing** - homeowners and renters receive funds to rent a different place to live or may be eligible to receive direct assistance when rental properties are not available.
- **Repair** - homeowners receive grants to repair damage from the disaster that is not covered by insurance. The goal is to make the damaged home safe and sanitary.
- **Replacement** - homeowners receive limited funds to replace their destroyed home.

- **Semi-Permanent or Permanent Housing Construction** - This type of assistance occurs only in insular areas or remote locations specified by FEMA, where no other type of housing assistance is possible.

### Other Needs Assistance (ONA)

Applicants receive grants for necessary and serious needs caused by the disaster. This includes personal property, transportation, funeral, medical, dental, moving and storage, and other expenses that FEMA approves. The homeowner or renter may need to apply for an SBA loan before receiving assistance.

### **SMALL BUSINESS ADMINISTRATION: DISASTER LOANS**

The U.S. Small Business Administration (SBA) can make federally subsidized loans to repair or replace homes, personal property, or businesses that sustained damages not covered by insurance. The SBA can provide three types of disaster loans to qualified homeowners, renters and businesses:

1. Home disaster loans to homeowners and renters to repair or replace disaster-related damages to home or personal property,
2. Business physical disaster loans to business owners to repair or replace disaster-damaged property, including inventory, and supplies; and
3. Economic injury disaster loans, which provide capital to small businesses and small agricultural cooperatives to assist them through the disaster recovery period.

For many individuals the SBA disaster loan program is the primary form of disaster assistance.

### **DISASTER UNEMPLOYMENT ASSISTANCE**

The Disaster Unemployment Assistance (DUA) program is funded by FEMA and administered by the U.S. Department of Labor. DUA provides unemployment benefits and re-employment services to eligible individuals who have become unemployed because of major disasters. DUA benefits are generally paid up to 26 weeks beginning with the first week following the date the major disaster began and ending with the 26th week following the date the major disaster is declared by the President, as long as the individual's unemployment continues to be a direct result of the major disaster. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other unemployment compensation.

All unemployed individuals must register with the state Workforce Agency in the declared state by phone, internet, or in person at local claims offices to determine their eligibility for the DUA program.

### **DISASTER LEGAL SERVICES**

Pursuant to 42 USC §5182 of the Stafford Act, whenever the President declares a major disaster, FEMA, through a Memorandum of Agreement with the Young Lawyers Division of the American Bar Association, provides free legal assistance to disaster survivors. Legal advice is limited to cases that will not produce a fee (i.e., these attorneys work without payment). A legal service hotline toll-free number may also be available as a means for individuals to

contact the volunteer lawyers for assistance with legal questions and concerns. Cases that may generate a fee are turned over to the local lawyer referral service. The assistance that participating lawyers provide typically includes:

- Assistance with insurance claims (life, medical, property, etc.);
- Assistance with home repair contracts;
- Counseling on landlord/tenant problems;
- Assisting in consumer protection, remedies, and procedures and
- Replacement of wills and other important legal documents destroyed in a major disaster

Disaster legal services are provided to low-income individuals, who, prior to or because of the disaster, are unable to secure legal services adequate to meet their needs as a consequence of a major disaster.

### **CRISIS COUNSELING ASSISTANCE AND TRAINING PROGRAM**

The Crisis Counseling Assistance and Training Program (CCP) is designed to provide supplemental funding to states for short-term crisis counseling services to people affected in Presidentially declared disasters. Supplemental funding for crisis counseling is available to the state through two grant programs: the Immediate Services Program, which provides funds for up to 60 days of services immediately following a disaster declaration; and the Regular Services Program, which provides funds for up to nine months following a major Presidential disaster declaration designated for Individual Assistance and CCP. A state may request either or both types of funding. The following services are offered under the CCP grant program:

- Individual Crisis Counseling - One-time contacts to help survivors understand their reactions, improve coping strategies, review their options, and connect with other individuals and agencies that may assist them.
- Basic Supportive or Educational Contact - General support and information on resources and services available to disaster survivors.
- Group Crisis Counseling - Group sessions led by trained crisis counselors who offer skills to help survivors cope with their situations and reactions.
- Public Education - Information and education about typical reactions, helpful coping strategies, and available disaster-related resources.
- Community Networking and Support - Relationship building with community resource organizations, faith-based groups, and local agencies.

To be eligible for crisis counseling services funded by the program, the person must be a resident of the designated area or must have been located in the area at the time the disaster occurred.

## **DISASTER CASE MANAGEMENT**

The Disaster Case Management (DCM) program supplements a state, local, tribal, or territorial (SLTT) government's capacity to provide support services to survivors after a disaster. There are two DCM programs: Immediate Disaster Case Management and Disaster Case Management.

The Immediate Disaster Case Management (IDCM) program is a FEMA-managed program that provides short-term, limited services to address immediate disaster-caused unmet needs and refers disaster survivors to available resources. Implementation of IDCM typically begins within 14-30 days of the declaration date. IDCM will not exceed 180 days and is not a federal award. It is implemented, administered, and overseen by FEMA, in coordination with SLTT governments.

Disaster Case Management (DCM) is a FEMA-funded federal award to SLTTs or qualified private organizations to implement a supplemental DCM program to supply services to survivors with long-term, disaster-caused unmet needs. The DCM federal award application must be submitted within 90 days from the date of the IA designation on the Presidential disaster declaration, and the period of performance shall not exceed 24 months from the date of the IA designation.

## **INTERNAL REVENUE SERVICE SPECIAL TAX CONSIDERATION**

Taxpayers who have sustained a casualty loss from a declared disaster may deduct that loss on the federal income tax return for the year in which the casualty actually occurred, or elect to deduct the loss on the tax return for the preceding tax year. The taxpayer may choose which of those two tax years provides the better tax advantage. The National Disaster Relief Act provides the following tax benefits:

- Allows all taxpayers, not just those who itemize, to claim the casualty loss deduction regardless of the taxpayer's adjusted gross income level.
- Increases the amount by which all individual taxpayers must reduce their personal casualty losses from each casualty from \$100 to \$500 for taxable years beginning after Dec. 31, 2008. The reduction amount returns to \$100 for taxable years beginning after Dec. 31, 2009.
- Removes the requirement that the net casualty loss deduction be allowed only if the casualty loss exceeds 10% of the taxpayer's adjusted gross income.
- Provides a five-year net operating loss (NOL) carryback for qualified natural disaster losses.
- Waives certain mortgage revenue bond requirements for affected taxpayers and allows the bond proceeds to be used for rebuilding.

The IRS may also expedite refunds due to taxpayers in a federally declared disaster area. An expedited refund can be a relatively quick source of cash, does not need to be repaid, and does not need an Individual Assistance declaration. It is available to any taxpayer in a federally declared disaster area.

## PUBLIC ASSISTANCE

The Public Assistance Program provides supplemental Federal disaster grant assistance for the repair, replacement, or restoration of disaster-damaged, publicly owned facilities, and the facilities of certain Private Non-Profit (PNP) organizations, following a Presidentially declared disaster or emergency. Eligible applicants include the states, U.S. territories, local governments, Federally-recognized Indian tribal governments, and certain PNP organizations. Eligible PNP facilities generally include medical, custodial care, educational, emergency (fire, police and EMS), utilities, and irrigation facilities, as well as other PNP facilities that provide essential social services to the general public. PNPs that provide “critical services” (power, water – including water provided by an irrigation organization or facility, sewer, wastewater treatment, communications, educational facilities and emergency medical care) may apply directly to FEMA for a disaster assistance. For emergency work, PNPs with facilities that provide noncritical, essential social services may apply directly to FEMA for assistance. However, for permanent work, noncritical PNPs must also apply for a Small Business Administration (SBA) Loan. If the PNP is declined for an SBA loan or the loan does not cover all eligible damages, PA funding may be eligible to cover those costs.

As soon as practicable after the declaration, the state, assisted by FEMA, conducts the Applicant Briefings for state, tribal, local and PNP officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed with the state within 30 days after the area is designated eligible for assistance. Following the Applicant’s Briefing, a Recovery Scoping Meeting is conducted with each Applicant where damages will be discussed, needs assessed, and a plan of action put in place. A combined Federal/state/tribal/local team proceeds with Project Formulation, which is the process of documenting the eligible work and costs associated with an applicant's claimed disaster-related impacts for both emergency work and permanent work. The team prepares a Project Worksheet (PW) for each project.

Projects fall into the following categories:

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other

For insurable structures within special flood hazard areas (SFHA), primarily buildings, assistance from FEMA is reduced by the amount of insurance settlement that could have been obtained under a standard NFIP policy. For structures located outside of a SFHA, FEMA will reduce the amount of eligible assistance by any available insurance proceeds. The Applicant must also obtain and maintain insurance on damaged insurable facilities, in the amount of the eligible damage for the hazard that caused the damage, as a condition of receiving PA funding.

FEMA reviews and approves the PWs and obligates the Federal share of the costs (which cannot be less than 75%) to the state. The state then disburses funds to local applicants. Once a declaration has been made, a tribal government may request to serve as its own Recipient for Public Assistance.

Projects falling below a certain threshold are considered 'small.' For Fiscal Year 2021, that threshold is \$132,800. For small projects, payment of the Federal share of the estimate is made upon approval of the project and no further accounting to FEMA is required. For large projects, payment is made on the basis of actual costs determined after the project is completed; although interim payments may be made as necessary. Once FEMA obligates funds to the state, further management of the assistance, including disbursement to Subrecipients is the responsibility of the state. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance and compliance with the law and regulations.

## HAZARD MITIGATION

Hazard Mitigation refers to sustained measures enacted to reduce or eliminate long-term risk to people and property from natural hazards and their effects. In the long term, mitigation measures reduce personal loss, save lives, and reduce the cost to the nation of responding to and recovering from disasters.

Two sections of the Stafford Act, §404 and §406, authorize hazard mitigation funds when a Federal disaster has been declared. In each case, the Federal government can provide up to 75% of the cost, with some restrictions.

Through the Hazard Mitigation Grant Program (HMGP), authorized by §404 of the Act, communities can apply for mitigation funds through the state. The state, as grantee, is responsible for notifying potential applicants of the availability of funding, defining a project selection process, ranking and prioritizing projects, and forwarding projects to FEMA for funding. The applicant or subgrantee carries out approved projects. The state, local government or homeowner must provide a 25% match, which can be fashioned from a combination of cash and in-kind sources. Federal funding from other sources cannot be used for the 25% non-federal share with one exception. Funding provided to states under the Community Development Block Grant program from the Department of Housing and Urban Development can be used for the non-federal share.

Total Federal funding under HMGP is based on a sliding scale of the estimated grants for individual assistance programs and public assistance projects. Section 322 of the Disaster Mitigation Act of 2000 emphasizes the importance of planning in reducing disaster losses. States were required to develop a State Mitigation Plan that provided a summary of the hazards facing them, an assessment of the risks and vulnerabilities to those hazards, and a strategy for reducing those impacts. These plans were required by May 1, 2005 as a condition of non-emergency assistance under the Stafford Act, and must be reviewed and updated every three years.

States may choose to develop an Enhanced State Mitigation Plan in order to receive an increased amount of up to 20% for Hazard Mitigation Grant Program funding. By November 1, 2004, local jurisdictions also were required to develop mitigation plans in order to be eligible for project grant funding under the Hazard Mitigation Grant Program. In addition, states may use a set-aside of up to 5% of the total HMGP funds available for mitigation measures at their discretion. To be eligible, a set-aside project must be identified in a state's hazard mitigation plan and fulfill the goal of the HMGP, that is, to reduce or prevent future damage to property or prevent loss of life or injury.

Eligible mitigation measures under the HMGP include acquisition or relocation of property located in high-hazard areas; elevation of flood prone structures; seismic rehabilitation of existing structures; strengthening of existing structures against wildfire; dry flood proofing activities that bring a structure into compliance with minimum NFIP

requirements and state or local code. Up to 7% of the HMGP funds may be used to develop state and/or local mitigation plans.

All HMGP projects, including set-aside projects, must comply with the National Environmental Policy Act and all relevant Executive Orders. HMGP grants cannot be given for acquisition, elevation, or construction purposes if the site is located in a designated Special Flood Hazard Area (SFHA) and the community is not participating in the NFIP.

Funding under §406 that is used for the repair or replacement of damaged public facilities or infrastructure may be used to upgrade the facilities to meet current codes and standards. It is possible for mitigation measures to be eligible for funding under both the HMGP and §406 programs; however, if the proposed measure is funded through §406, the project is not eligible for funds under the HMGP as well.

## FEMA REGIONAL OFFICES

### Region 1

Connecticut, Maine, Massachusetts, New Hampshire,  
Rhode Island, Vermont  
Federal Emergency Management Agency  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110-2320  
(617) 956-7506

### Region 2

New Jersey, New York, Puerto Rico, Virgin Islands  
Federal Emergency Management Agency  
26 Federal Plaza, Room 1337  
New York, NY 10278-0002  
(212) 680-3600

### Region 3

Delaware, District of Columbia, Maryland,  
Pennsylvania, Virginia, West Virginia  
Federal Emergency Management Agency  
One Independence Mall, 6<sup>th</sup> Floor  
615 Chestnut Street  
Philadelphia, PA 19106-4404  
(215) 931-5608

### Region 4

Alabama, Florida, Georgia, Kentucky, Mississippi,  
North Carolina, South Carolina, Tennessee  
Federal Emergency Management Agency  
3005 Chamblee-Tucker Road  
Atlanta, GA 30341  
(770) 220-5200

### Region 5

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin  
Federal Emergency Management Agency  
536 South Clark Street, 6<sup>th</sup> Floor  
Chicago, IL 60605  
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### Region 6

Arkansas, Louisiana, New Mexico, Oklahoma, Texas  
Federal Emergency Management Agency  
Federal Regional Center  
800 N. Loop 288  
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### Region 7

Iowa, Kansas, Missouri, Nebraska  
Federal Emergency Management Agency  
9221 Ward Parkway, Suite 300  
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### Region 8

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Utah, Wyoming  
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### Region 9

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### Region 10

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