

Authorizing Stafford Act Public Assistance

October 15, 2020

This Insight reviews the factors and policy issues that inform the authorization of the Federal Emergency Management Agency's (FEMA's) Public Assistance (PA) program, pursuant to presidential declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([Stafford Act](#), P.L. 93-288, as amended). This Insight also discusses forthcoming rulemaking on the factors authorized by the Disaster Recovery Reform Act of 2018 (DRRA, P.L. 115-254).

PA Authorization

FEMA's PA program supports state, local, tribal, and territorial governments (hereinafter SLTTs), and eligible [nonprofits](#) when authorized through a Stafford Act declaration.

The President generally authorizes PA following a request by a governor or tribal chief executive for an emergency or major disaster declaration, when SLTT resources are insufficient to respond and recover (see **Figure 1**). FEMA determines whether there are unmet needs that may warrant PA, and makes a recommendation to the President, who may then issue a declaration authorizing PA for [Emergency Work](#) ([debris removal](#) and/or [emergency protective measures](#)) and/or [Permanent Work](#) (reconstruction of eligible public and nonprofit disaster-damaged [facilities](#)).

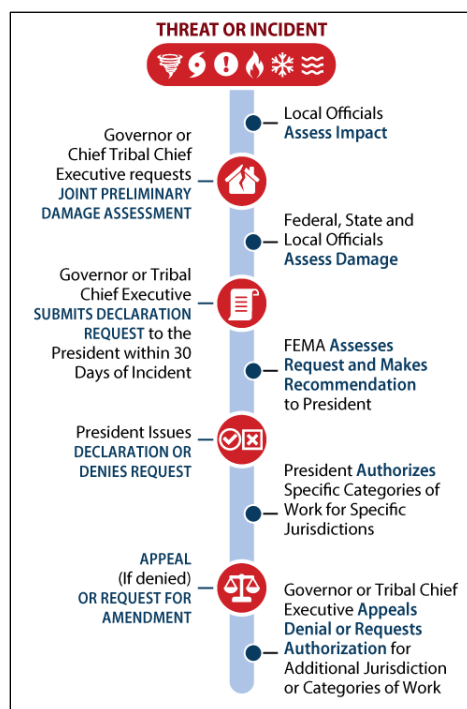
FEMA's method to evaluate requests for PA have raised congressional concern. In 2012, the Government Accountability Office (GAO) [found](#) that the thresholds FEMA uses to identify unmet needs had not kept pace with inflation and per-capita income gains. The GAO [suggested](#) that FEMA increase the thresholds or identify another metric (e.g., [total taxable resources](#)) to assess SLTT capacity to respond and recover. The [Department of Homeland Security \(DHS\)](#) [concurred](#), but the recommendation is unimplemented.

The passage of [DRRA in 2018](#) required FEMA to review the PA factors. [Forthcoming rulemaking](#) appears that it would implement the GAO's recommendations.

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Figure 1. Stafford Act Declaration Request Process

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

Current Methods to Assess PA Authorization

For Stafford Act emergencies, FEMA qualitatively evaluates whether the incident’s “[severity and magnitude](#)” exceeds the capacity of SLTTs to respond, thus warranting PA.

By contrast, for Stafford Act major disasters, FEMA uses [six mostly quantifiable factors](#) to assess PA authorization. FEMA estimates the cost of PA across the affected jurisdiction using a [Preliminary Damage Assessment](#) (PDA) conducted by federal and SLTT representatives (generally, this measures the uninsured costs to reconstruct eligible disaster-damaged facilities). FEMA usually recommends PA when these estimates exceed \$1 million across a state or territory, or [\\$250,000](#) across a tribe. Additionally, FEMA generally recommends PA only when damages exceed “per-capita indicators”—for FY2020, these thresholds are [\\$1.53](#) across a state, tribe, or territory and [\\$3.84](#) across affected localities (FEMA annually updates these thresholds to reflect inflation). FEMA exercises discretion in its recommendations, and may consider mitigating measures (which may have reduced damages), or a [recent history of disasters](#) that exhausted SLTT capacity.

While no single factor determines whether FEMA recommends authorization, per-capita indicators have historically proved crucial. In 2012, GAO found that FEMA used the indicators as “[eligibility thresholds](#)”—99% of major disaster declarations reflected damage estimates where indicators were met or exceeded. The exclusive use of per-capita indicators may violate the Stafford Act [prohibition](#) on the use of sliding scales to deny federal assistance.

Forthcoming Rulemaking on PA Authorization

Some in Congress have expressed concern that the PA factors inaccurately measure unmet needs. The passage of DRRA in 2018 [required](#) FEMA to review the factors in response.

Section 1232 of DRRA required FEMA to give greater consideration to severe local impacts and recent disasters when considering requests for PA. FEMA [reported](#) that it had implemented this provision by soliciting relevant information in FEMA’s [cover letter](#) for declaration requests.

Section 1239 required FEMA to revise PA cost-estimating factors; FEMA [initiated this rulemaking](#) in December 2019. FEMA proposed the following modifications:

1. an increase to the \$1 million minimum damage threshold;
2. increased per capita indicators reflecting inflation and per-capita income gains;
3. adjusted indicators based on [total taxable resources](#) to better gauge SLTT capacity; and
4. the use of annual population estimates in lieu of decennial census data.

According to FEMA, [the changes](#) would better distribute the “responsibilities between the States and the Federal Government, and will incentivize States to invest more in response, recovery, and mitigation capabilities.” Additionally, FEMA expects the modifications to limit Stafford Act declarations to more catastrophic incidents. FEMA [announced](#) that it anticipates publishing a Notice of Proposed Rulemaking in 2020.

Policy Issues—PA Authorization Factors

Some in Congress and SLTT stakeholders have identified concerns relevant to the forthcoming rulemaking, including:

Excessive Authorization of PA

As noted above, the GAO [concluded](#) in 2012 that the per-capita indicators had not kept pace with per-capita income gains and inflation, possibly resulting in PA authorization when SLTTs may have the capacity to respond and recover. Some scholars have noted that state disaster spending is [highly variable](#), and SLTT stakeholders have demonstrated that [most incidents](#) are managed without federal assistance. FEMA’s proposed rulemaking appears to implement the GAO’s recommendation to increase per-capita indicators by shifting the cost of smaller disasters to SLTTs.

Inequities in PA Authorization

PA authorization is based upon the estimated costs of PA-eligible work; commercial, personal, and federal property are ineligible. Some in Congress and SLTT stakeholders have noted that the use of the indicators (especially if increased) may disadvantage [small, rural](#) and/or [less wealthy](#) areas with less costly eligible facilities. FEMA [explained](#) that it will consider severe local impacts in accordance with DRRA Section 1232.

Timing and Geography of Damages

PDAs only measure impacts incurred during a certain time period (the FEMA-defined “[incident period](#)”). Some in Congress have raised concern that the [impacts of a disaster](#) may not always coincide with the incident period. For example, initial damages incurred during a [slow-onset event](#), such as sea level rise, may not receive PA authorization if damages incurred during the initial incident period do not meet per-capita indicators, irrespective of subsequent damages. Similarly, [compound events](#) (e.g., fires following an earthquake) may not individually meet the damage indicators, jeopardizing PA authorization. FEMA’s per-capita indicators also measure damages within political boundaries that may not correspond with the geography of a hazard. The proposed rulemaking does not discuss these issues.

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