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April 12, 2017

Regulatory Affairs Division, Office of Chief Counsel
Federal Emergency Management Agency
8NE, 500 C Street, SW
Washington, DC 20472

Re: Docket FEMA-2016-0003

Dear Sir or Madam:

Thank you for the opportunity to submit comments on the Supplemental Advance Notice of Proposed Rulemaking to establish a deductible for the Federal Emergency Management Agency's (FEMA)'s Public Assistance program.

The Pew Charitable Trusts strongly supports FEMA's overall efforts to promote greater investment in pre-disaster mitigation across all levels of government. We consider FEMA's public assistance deductible concept an important step in promoting additional state investment in mitigation and preparedness. We hope FEMA will make appropriate changes based on the public comment process and move forward with a new and improved approach to disaster spending.

A number of researchers, including those in government and business, have documented that the nation suffers from what has been called a "resiliency gap" – underinvestment in preparation for extreme weather coinciding with a costly reliance on disaster response and recovery.[1] As a report published by the National Academies in 2012 concluded, "[t]he large amounts of money the federal government spends in responding to disasters are one indicator of the urgency of the

[1] See, for example, United States Government Accountability Office, "Natural Hazard Mitigation: Various Mitigation Efforts Exist, but Federal Efforts Do Not Provide a Comprehensive Strategic Framework," August 2007, http://www.gao.gov/assets/270/265689.pdf; United States Government Accountability Office, "Federal Disaster Assistance: Federal Departments and Agencies Obligated at Least $277.6 Billion during Fiscal Years 2005 through 2014," September 2016, https://www.gao.gov/assets/680/679977.pdf; Testimony of Lindene Patton, Zurich Insurance Group, Ltd., before the Senate Homeland Security and Government Affairs Committee, February 12, 2014, "Closing the Extreme Weather Resilience Gap," https://www.hsgac.senate.gov/download/?id=652cbb06-1081-45c8-a9f2-d9785e99d8ea; and Swiss Re and Johns Hopkins School of Advanced International Studies, "Reframing Risk & Resiliency in the Columbia River Basin Own Your Risk," 2014, https://www.sais-jhu.edu/sites/default/files/Own_your_risk%20report.pdf.

need to increase the nation's resilience to these events. These expenditures are borne by the entire nation and have been growing steadily for the last 60 years, both in absolute terms and on a per capita basis."[2]

Smarter choices about where and how development occurs are needed now more than ever to limit our risk exposure to future disaster damages and losses. In turn, prepared communities will be able to recover and rebuild more quickly and at a lower cost. We believe the public assistance deductible could foster these choices and help close the preparedness gap.

Background

A 2016 report by the Government Accountability Office (GAO) found that of the $277.6 billion obligated by the federal government for disaster assistance from fiscal years 2005-14, less than $600 million was designated to FEMA's Pre-Disaster Mitigation program. With tighter budgets and extreme events growing more frequent and more costly, the nation cannot continue this modus operandi. Further, research by the National Institute for Building Sciences found that every dollar invested in mitigation results in $4 in savings, on average. In light of current trends and research, we believe increased investments in preparedness are prudent.

While this proposal has raised understandable concerns about shifting responsibilities for disaster response and recovery to state or local governments, we do not view the approach as one aimed at transferring costs. Rather, we see the proposal as one to spur action by a level of government that is uniquely positioned to influence key decisions on land use planning, natural resource management, capital investment, and building requirements that can save lives and property and ultimately reduce costs. Particularly when viewed in contrast to other possible updates to FEMA's Per Capita Damage Indicator, this proposal offers an innovative option for strengthening the commitment of all levels of government to disaster preparedness and mitigation.

We start with recognition of the basic dilemma behind many disaster losses in the United States: The Federal government, often called upon to assist with disaster response and recovery, does not have the authority to regulate the use of land in individual communities. Those decisions, which can significantly affect the level of damages inflicted by floods and other natural disasters, rest largely with states, and in many instances, have been delegated to local governments.

Local governments are the "first line of defense" when disasters strike and face their own unique challenges in balancing competing priorities. While they often bear primary responsibility for adopting and enforcing building codes, reviewing development proposals, issuing permits, and carrying out inspections, localities may have difficulty taking actions that could suppress local development, even in risky areas. As the Government Accountability Office concluded in 2007,

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[2] Committee on Increasing National Resilience to Hazards and Disasters and Committee on Science, Engineering, and Public Policy, The National Academies, Disaster Resilience: A National Imperative, 2012, http://www.nap.edu/catalog.php?record_id=13457

"[c]ommunities' economic interests can often conflict with long-term hazard mitigation goals...[and a] desire for economic growth may allow development to occur in hazard-prone areas (e.g., along the coast or in floodplains)." That disconnect was a key factor behind the creation of the federal flood insurance program nearly 50 years ago and remains an impediment to improving the nation's level of disaster preparedness and resilience. We view promoting greater engagement by states as a positive step forward that will strengthen the multi-jurisdictional partnership needed for addressing natural hazards.

Even in states with strong home rule powers, where considerable decision-making authority rests with localities, we would argue that this level of government is well-positioned to influence preparation and pre-disaster investment in projects to lessen risk and build resilience. Some forward-thinking states have taken steps to raise awareness of risk, generate smarter investments, and shift resources to pre-disaster mitigation.

For example South Carolina has adopted state policies to track long-term rates of beach erosion and ties those rates to setbacks for coastal development,[3] while several states, including California, Oregon, South Carolina, and North Carolina require some or all local governments to include a hazard element in their local development plans.[4] The State of Wisconsin works with local land use authorities and dam owners to restrict future development within the potential failure zones for large dams.[5] Vermont assists localities that have protected their flood zones from new encroachments and that participate in FEMA's Community Rating System with additional state funding to match federal mitigation grants; North Carolina has invested heavily in improved online flood zone maps,[6] while Massachusetts includes floodplains and other natural hazard areas in the criteria for designating and protecting areas of critical environmental concern.[7]

FEMA has worked to highlight the value of many such programs, through NFIP's Community Rating System and development of guidance on best practices, seminars, and other educational materials, but the deductible proposal recognizes and rewards these state efforts in a new way: It translates the value of proven mitigation programs to dollars and cents – offering credits for federal assistance to those states that are proactive. The promise of an effective deductible policy would be to transform exemplary innovations and solutions into common practice across the country.

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[3] London, James, B., et al, "An Assessment of Shoreline Management Options Along the South Carolina Coast," Clemson University, August 2009, http://sti.clemson.edu/publications-mainmenu-38/commentaries-mainmenu-211/cat_view/30-sc-water-resources-center

[4] Beatley, Timothy, Planning for Coastal Resilience: Best Practices for Calamitous Times, Island Press, 2009.

[5] Wisconsin Department of Natural Resources, "Dam failure analysis (DFA), http://dnr.wi.gov/topic/dams/documentsDFA.html

[6] North Carolina Department of Public Safety, "North Carolina's Flood Risk Information System," http://www.floridadisaster.org/Mitigation/silverjacket/documents/FRIS_one%20pager_051413.pdf

[7] Massachusetts Office of Energy and Environmental Affairs, "Areas of Critical Environmental Concern (ACEC), http://www.mass.gov/eea/agencies/dcr/conservation/ecology-acec/areas-of-critical-environmental-concern-acec.html

Our comments are aimed at informing the Agency proposal to ensure more mitigation is instituted while balancing the uniqueness of each state and the complexity of the nation's response system.

Scope

The Pew Charitable Trusts supports limiting this program to permanent recovery and reconstruction work. It is critical that states, local governments, and individuals remain confident that the federal government will continue to assist with emergency life-saving work and support families through individual assistance, as necessary.

Risk Indicators

As FEMA indicates the Hazus model does not consider all possible risks, but we believe that in this context it offers a reasonable proxy of likelihood of risk and relative damage. Since flooding alone has been responsible for the largest portion of disaster costs, an assessment which covers flooding fully, as Hazus does, is critical. The other advantage of Hazus is that there is widespread familiarity with the tool.

Over time, this tool might be enhanced or improved, but it is a reasonable starting point for the deductible calculations.

Fiscal Capacity Indicators

We appreciate FEMA's acknowledgement of the variation in states' ability to pay for disasters and its efforts to develop a fiscal capacity index that recognizes each state's unique conditions. We see the criteria as generally appropriate and more useful than a simple dollar amount per capita. Further, we appreciate FEMA using multiple measures of fiscal capacity rather than rely on a single measure such as Total Taxable Resources. We recommend that FEMA use multi-year averages of these measures to capture what can be significant variation in state fiscal health over time.

There are some additional important considerations we would urge FEMA to consider in refining this part of the proposal, such as:

- The Census Bureau's data on per capita surplus and deficit do not actually reflect state budget surpluses or deficit, as noted by Census' own methodology. These measures also include federal funds which are almost always dedicated to specific purposes and would not be available to states for disaster response or mitigation.
- As FEMA is aware, state reserve and/or rainy day funds often have restricted uses and, therefore, are not necessarily available for state disaster response and mitigation.
- State bond ratings take many factors into account including total revenues, expenditures, and reserves, as well as fiscal management and economic factors, etc. Thus, bond ratings may not represent an adequate enough "separate and distinct aspect of a State's economy

and governmental resources" for what FEMA is trying to capture. And many states have constitutional or statutory limits on their bonding, so the rating itself may not be a good proxy for a state's ability to quickly raise funds in the event of a disaster.

Credits for Mitigation/Preparation

We appreciate FEMA's recognition that states can spend significant amounts of their own funds on disasters, both on federally declared disasters and other non-Stafford Act events. We also recognize that many local governments have made their own investments in resilience. Nonetheless, we understand FEMA's decision not to consider those local investments in the credit calculations. This is not to diminish the value of those contributions but considers the limitations on data availability and difficulty of collecting such information. States are the first line recipients of Stafford Act public assistance and, in turn, key decision makers about prioritizing and distributing such aid locally.

Mitigation Expenditures: The breadth of the possibilities under this category, along with restrictions within the Hazard Mitigation Guidance regarding certain ineligible activities, may make data collection and accounting under this item somewhat difficult or at least time-consuming, particularly as the Agency strives to treat each state equitably. Because of this complexity, we recommend that FEMA also consider more clearly defining a limited number of specific mitigation expenditure categories to include, such as the following:

- floodplain conservation and restoration, including land acquisition or easements that maintain floodplain functions or provide opportunities for wetland migration;
- effective hazard disclosure for real estate sales and leasing transactions;
- special state requirements for freeboard, safe rooms, or other programs to protect critical facilities; or
- dam and levee safety programs, including mapping and disclosure of inundation zones as well as inspection and maintenance requirements.

We encourage FEMA to make clear that state expenditures toward nature-based approaches to storm and flood risk reduction will be fully recognized as creditable mitigation expenditures. Protecting and restoring healthy wetlands, salt marshes, dunes, and riverine areas can decrease the effects of flooding and associated damages on people, homes, and businesses in adjacent communities while providing multiple other environmental benefits such as habitat for fish and wildlife. Research has shown that using nature-based solutions to mitigate the threats posed by severe weather can be both economical and long-lasting. One recent study found that coastal wetlands provide an estimated $23 billion each year in storm protection benefits. We encourage FEMA to prominently highlight the important role nature-based approaches to risk reduction can play alongside other traditional disaster risk reduction strategies.

Additionally, FEMA might consider allowing for states that undertake a major single-year investment in a costly mitigation project to earn "credit over time."

Building Code Effectiveness Grade Schedule: We concur strongly with inclusion of credits for building code effectiveness and suggest that since rigorous enforcement of up-to-date building codes has been shown to be extremely effective in limiting natural hazard damage, the Agency may consider a higher level of credit for the strongest programs. The value of modern building codes in protecting both residential and commercial properties has been demonstrated repeatedly. In 2004, for example, the Institute for Business & Home Safety (IBHS), the University of Florida, and the FEMA Mitigation Assessment Team examined the value of adoption and enforcement of modern building codes in preventing or lessening damages associated with Hurricane Charley's strike on Florida in 2004. That study concluded that building codes had reduced the cost of insurance losses by 42 percent and the frequency of claims by 60 percent.[8] As FEMA's Associate Administrator David Miller testified before Congress in 2012, this particular study is not an aberration. According to Miller, "[p]ost-disaster assessments of many communities have shown a direct relationship between building failures, the codes adopted, the resources directed toward implementation and enforcement, and the services available to support those codes."[9]

Dedicated Funding for Emergency Response/Recovery & Expenditure for non-Stafford Response & Recovery: We support credits that recognize that states make significant expenditures for non-Stafford response and recovery and reward states for dedicating funds for response and recovery, especially as budgets at all levels grow increasing tight. Given that the overall goal of this proposal is to foster preparedness and mitigation, however, we also support a cap on these credits geared towards response/recovery efforts. Research by an arm of the National Institute for Building Sciences supports weighting mitigation activities more heavily based on findings that, on average, every dollar invested in mitigation results in $4 in savings.

Tax Incentive Programs: When designed and managed well, tax incentives can strengthen a state's economy by helping to create and expand businesses, producing new jobs and spur additional investments. A well-designed incentive—that is regularly evaluated to assess its effectiveness—can encourage preparedness and mitigation activities and therefore we support the proposed credit. State examples of tax incentives show these programs have

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[8] Institute for Business & Home Safety, the University of Florida, and the Federal Emergency Management Agency, "Hurricane Charley: Nature's Force vs. Structural Strength," August 2004, http://disastersafety.org/wp-content/uploads/hurricane-charley-report.pdf

[9] Testimony of David Miller, Associate Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, before the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, July 24, 2012, https://www.fema.gov/media-library-data/1411484284311-e8fb5fa4daa75683bc75adc9fb01fd9d/7_24_12___review_of_building_codes_and_mitigation_efforts.pdf

potential to make an impact by encouraging property owners to take responsible action. For example, from 2011 to 2015, 13,026 homeowners used Alabama's tax deduction to mitigate the risk of wind or flood damage.[10] In South Carolina, more than 1,100 property owners claimed almost $1.3 million to reduce risk to their structures from 2008 to 2014.[11]

Transition Period and Implementation

We concur with FEMA's proposal to rescore risks and fiscal capacity indicators and to recalculate credits on a yearly basis using updated longitudinal data, and we agree with the approach of allowing credits that occur after the credit deadline to roll into the next year's considerations. We are concerned, however, that this proposal does not allow sufficient time for the states or FEMA itself to implement procedures to collect and review the initial set of data. As an alternative, we recommend a full 2-year timeline for the initiation of the program to ensure enough time to collect and review data and ensure a solid foundation for the start of the program. After the initial 2-year period, the timeline could be shortened to 12 or 18 months after FEMA and the states have the opportunity to work through the initial accounting approaches.

We also appreciate that FEMA has attempted to ease the states' transition into this new approach by capping each state's first year pre-credit deductible at an amount equivalent to the then-current PCI level, with increases over time. However, the phase in proposal seems more drawn out than necessary, and we would recommend FEMA consider shortening the 10-year timeline for phase-in.

The Pew Charitable Trusts appreciates the Agency's effort to provide a comprehensive and sophisticated proposal to reform the way our nation prepares for and responds to disasters. We believe that this detailed framework allows for thoughtful consideration of a much-needed update to FEMA's current approach to providing disaster assistance funding, one that can address the nation's disaster resilience gap with enhanced programs for preparedness and mitigation.

Sincerely,

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The Pew Charitable Trusts

Velma Smith
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The Pew Charitable Trusts

[10] Email from Kelly Graham, Director of Economic Development, "Tax Credit Questions," sent to Matt Fuchs, The Pew Charitable Trusts, February 7, 2017.
[11] South Carolina Department of Insurance, Status of the South Carolina Coastal Property Insurance Market (2015), p. 34, http://doi.sc.gov/documentcenter/view/8724