



2005 Market Street, Suite 1700  
Philadelphia, PA 19103-7077

215.575.9050 Phone  
215.575.4939 Fax

901 E Street NW, 10th Floor  
Washington, DC 20004  
[www.pewtrusts.org](http://www.pewtrusts.org)

202.552.2000 Phone  
202.552.2299 Fax

February 11, 2021

Regulatory Affairs Division, Office of Chief Counsel  
Federal Emergency Management Agency  
500 C Street SW  
Washington, D.C. 20472

**Re: Docket ID FEMA–2020–0038**

Dear Sir or Madam:

Thank you for the opportunity to submit comments on the notice of proposed rulemaking “Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program.”

The Pew Charitable Trusts supports the Federal Emergency Management Agency (FEMA)’s overall efforts to manage the rising costs of disasters and promote resilience at all levels of government, particularly through investment in pre-disaster mitigation. We also acknowledge that the Cost of Assistance (COA) factors currently in place to assist FEMA in making eligibility decisions for the Public Assistance (PA) grant program do not accurately reflect significant economic changes that have occurred since they were introduced.

At the same time, there are technical issues with the current proposal that merit further consultation and review by FEMA, regarding both the use of Total Taxable Resources (TTR) as a primary measure of state fiscal capacity and whether the proposal will achieve the desired impact on pre-disaster mitigation investment by states.

Taken as part of the federal government’s overarching efforts to develop more forward-thinking disaster policy, however, the current proposal falls short of the ultimate goal of fairer and more carefully targeted distribution of responsibility for managing disaster risk among levels of government. As such, the agency should consider initiating a coordinated effort with states, localities, and other stakeholders to develop an alternative to this policy that, beyond simply shifting future costs between levels of government, would better serve the agency’s long-term goals, even if it means delaying the rulemaking process past the recent extension to March 12, 2021. This collaboration would also follow the spirit of language on state and local consultation contained in the Disaster Recovery and Reform Act of 2018 and report language in the fiscal year 2021 omnibus appropriations bill, discussed in more detail below.

## **The COA methodology should be updated, but should incorporate additional factors beyond TTR**

### *Inflation adjustments and population estimates*

Although Pew suggests a reconsideration of the current proposal and a delay in the rulemaking process, we agree with FEMA's reasoning in adjusting COA factors for inflation and population. As FEMA notes, the per capita indicator and minimum threshold used by the agency to inform the President's decision to declare a major disaster declaration with PA do not accurately reflect current economic realities. Given the existing body of evidence, Pew concurs that using a per capita indicator that has been inconsistently tied to inflation since its inception in 1986, despite adjustments in 1999, results in an artificially low estimate of the amount of disaster damage that should be considered within a state's capacity to manage without federal aid. In addition, the initial selection of \$1 million as the minimum threshold and subsequent failure to adjust that figure for inflation results in similar imprecision. As the agency is aware, improving this methodology has been a recommendation of the Government Accountability Office (GAO) in multiple reports over many years.<sup>1</sup>

FEMA also suggests replacing decennial census figures in its calculations with estimates from the U.S. Census Bureau's Population Estimates Program, providing evidence that decennial figures are less precise in the latter part of each decade. The agency argues convincingly that this, along with other factors including the outdated per capita indicator and minimum thresholds, as well as climate-induced severe weather events, has led to growth in the number of declared disasters. In turn, this can strain the agency's capacity to deal with simultaneous and catastrophic disasters.

### *Concerns regarding fiscal capacity measures*

The current proposal suggests the introduction of a state's TTR into the COA estimate, an indicator that FEMA has recently applied to factors for determining eligibility for FEMA's Individual Assistance (IA) Program.<sup>2</sup> In comments to FEMA's previous proposal to establish a so-called "disaster deductible" for the PA program (FEMA-2016-0003), Pew noted that use of TTR is in keeping with recommendations from the GAO dating back to 1996.<sup>3</sup>

However, in subsequent comments on the deductible concept, Pew also endorsed a more nuanced, multi-factor approach to measuring state fiscal capacity that combined TTR with other indicators.<sup>4</sup> TTR is used to direct some federal grants; however, research has shown that this type of revenue measure is an incomplete proxy for state fiscal capacity.<sup>5</sup> While we understand that the Stafford Act and FEMA's

---

<sup>1</sup> U.S. Government Accountability Office, "Disaster Assistance: Improvement Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures" (2001), <https://www.gao.gov/products/GAO-01-837>; U.S. Government Accountability Office, "Disaster Assistance: Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own" (2012), <https://www.gao.gov/products/GAO-12-838> Procedures

<sup>2</sup> See Federal Emergency Management Agency, "Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration," 44 C.F.R. § 206.48(b) as amended (2019), <https://ecfr.federalregister.gov/current/title-44/chapter-I/subchapter-D/part-206/subpart-B/section-206.48>

<sup>3</sup> Comment submitted by Laura Lightbody and Velma M. Smith, The Pew Charitable Trusts, Docket ID: FEMA-2016-0003, March 21, 2016

<sup>4</sup> Comment submitted by Laura Lightbody and Velma M. Smith, The Pew Charitable Trusts, Docket ID: FEMA-2016-0003-0232, April 12, 2017, [https://www.pewtrusts.org/-/media/assets/2017/06/fpc\\_femas\\_approach\\_to\\_disaster\\_funding\\_needs\\_improvement.pdf](https://www.pewtrusts.org/-/media/assets/2017/06/fpc_femas_approach_to_disaster_funding_needs_improvement.pdf)

<sup>5</sup> Tracy Gordon, Richard Auxier, and John Iselin, Tax Policy Center "Assessing Fiscal Capacities of States" (Urban Institute, 2012), 53, [https://www.urban.org/research/publication/assessing-fiscal-capacities-states-representative-revenue-system-representative-expenditure-system-approach-fiscal-year-2012/view/full\\_report](https://www.urban.org/research/publication/assessing-fiscal-capacities-states-representative-revenue-system-representative-expenditure-system-approach-fiscal-year-2012/view/full_report)

policies allow for other factors to be considered for a Presidential disaster declaration, under the current approach and this proposal, the per capita indicator and TTR are the key quantitative factors. As such, the potential exists for these factors to play an outsized role in the decision-making process.

Therefore, in response to the current proposal, Pew suggests FEMA return to consideration of a more fully indexed approach that could incorporate relative disaster risk, social vulnerability, and demonstrated commitment to and investment in mitigation. Other potential indicators appear in report language to the fiscal year 2021 omnibus appropriations bill, including localized poverty and unemployment rates.<sup>6</sup>

### **COA factor adjustment should be considered in context of disaster mitigation needs**

Pew strongly supports the federal government's efforts to increase our nation's resilience to disasters, particularly through investment in pre-disaster mitigation. Spending on disasters is on the rise: FEMA PA expenditures grew 23% when comparing the 2000-09 and 2010-19 decades.<sup>7</sup> From 2005 through 2019, the federal government spent at least \$460 billion on disaster assistance, with a significant portion of that spending happening outside of FEMA.<sup>8</sup> Estimating such spending at the state and local level is challenging, due to lack of comprehensive tracking, but is also significant.<sup>9</sup>

As FEMA is aware, a solution for managing these rising costs is to invest more resources in pre-disaster mitigation and to design policies that incentivize risk mitigating behavior at all levels of government. A growing body of research has documented the cost-saving potential of common-sense pre-disaster mitigation actions, including adoption and implementation of statewide building codes that incorporate the latest proven hazard prevention measures,<sup>10</sup> use of substantial freeboard or elevation in new

---

<sup>6</sup> "Disaster Declaration Recommendations.-FEMA is directed to consult with states on its policies for estimating disaster damage costs in relation to the population of a state when determining whether to recommend that the President issue a federal disaster declaration. The consultation should include considerations of local economic factors such as the local assessable tax base; the local sales tax; the median income and poverty rate of the local affected area as it compares to that of the state; and the economic health of the state, including factors such as the state unemployment rate compared to the national rate."

Consolidated Appropriations Act, 2021 (HR 133), *Congressional Record* 160: 218—Book IV (Dec. 21, 2020) H8479, <https://www.govinfo.gov/content/pkg/CREC-2020-12-21/pdf/CREC-2020-12-21-house-bk4.pdf>

<sup>7</sup> Pew analysis of data from Department of Homeland Security, "OpenFEMA Dataset: Public Assistance Funded Projects Details - V1, 1991-2019," accessed May 13, 2020, <https://www.fema.gov/about/openfema/data-sets#public>. This figure includes only public assistance spending for natural disasters in the 50 states and the D.C. Data was adjusted using GDP deflator for fiscal year 2019.

<sup>8</sup> U.S. Government Accountability Office, "National Preparedness Additional Actions Needed to Address Gaps in the Nation's Emergency Management Capabilities" (2020), <https://www.gao.gov/assets/710/706612.pdf>; The Pew Charitable Trusts, "Federal Disaster Assistance Goes Beyond FEMA," Sept. 29, 2017, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/09/federal-disaster-assistance-goes-beyond-fema>. The \$460 billion figure includes \$277.6 billion that federal departments and agencies spent during fiscal 2005 through 2014, plus funds provided in supplemental appropriations following major disasters from 2015 to 2019.

<sup>9</sup> The Pew Charitable Trusts, "What We Don't Know About State Spending on Natural Disasters Could Cost Us" (2018), <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/06/19/what-we-dont-know-about-state-spending-on-natural-disasters-could-cost-us>

<sup>10</sup> Christopher P. Jones, William L. Coulbourne, Jamie Marshall, and Spencer M. Rogers, Jr., "Evaluation of the National Flood Insurance Program's Building Standards" American Institutes for Research (2006), <https://www.fema.gov/media-library/assets/documents/9585>; Federal Emergency Management Agency, "2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards," (2008), [https://www.wbdg.org/FFC/DHS/fema\\_2008\\_supp\\_to\\_2006\\_eval\\_nfip\\_stand.pdf](https://www.wbdg.org/FFC/DHS/fema_2008_supp_to_2006_eval_nfip_stand.pdf); Laura Kusisto and Arian Campo-Flores, "Homes Built to Stricter Standards Fared Better in Storm," *Wall Street Journal*, Sept. 16, 2017, <https://www.wsj.com/articles/one-early-lesson-from-irma-hurricane-building-codes-work-1505559600>; Leslie Chapman-

construction,<sup>11</sup> limits on siting of critical facilities in flood-prone areas,<sup>12</sup> updated stormwater management based on the most recent precipitation data or anticipated trends,<sup>13</sup> efforts to restore or conserve the storm storage capacity of naturally-functioning floodplains,<sup>14</sup> buyouts of vulnerable structures,<sup>15</sup> and other mitigation actions.<sup>16</sup>

The National Institute of Building Sciences' 2019 report on natural hazard mitigation summarizes benefit-cost ratios on some of these activities:<sup>17</sup>

- Adopting model codes saves \$11 per \$1 spent
- Federal mitigation grants save \$6 per \$1 spent
- Private-sector building retrofits save \$4 per \$1 spent
- Exceeding codes saves \$4 per \$1 spent
- Mitigating infrastructure saves \$4 per \$1 spent

Despite this proven potential for pre-disaster mitigation to save lives and money, the level of public and private investment to date falls far short of what is needed. The need for enhanced mitigation spending and action has been highlighted by recent reports from FEMA's own National Advisory Council. In 2020,

---

Henderson, "Research Finds Consumer Overconfidence Regarding Building Codes in Disaster-Exposed Communities," *Road to Resilience*, June 4, 2019, <https://lesliechapmanhenderson.blog/2019/06/04/research-finds-consumer-overconfidence-regarding-building-codes-in-disaster-exposed-communities/>

<sup>11</sup> Federal Emergency Management Agency and Dewberry Consultants, LLC, "Reducing Losses through Higher Regulatory Standards: 2013 Colorado Floods Case Study, FEMA-DR-4145-CO," (2015), <https://www.hsd.org/?abstract&did=787239>; Michael K. Hollar, "Reducing the Flood Hazard Exposure of HUD-Assisted Properties." *Cityscape* 19, no. 2 (2017): 281-300, <http://www.jstor.org/stable/26328341>

<sup>12</sup> Federal Emergency Management Agency and Dewberry Consultants, LLC, "Reducing Losses through Higher Regulatory Standards: 2013 Colorado Floods Case Study, FEMA-DR-4145-CO"

<sup>13</sup> Jennifer L. Jurado, "Sea Level Rise and Flooding: Planning for Future Conditions," (presentation, Florida Sea Grant Workshop, Nov. 16, 2017), <https://www.flseagrant.org/wp-content/uploads/Jurado-SeaGrant-111617.pdf>; Rebecca Kessler, "Stormwater Strategies: Cities Prepare Aging Infrastructure for Climate Change," *Environmental Health Perspectives* 119(12) (2011): a514–a519, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3262001/>; Michael Zygnerski, "Broward County Future Conditions Map Series," (presentation, South Florida Hydrologic Society, August 22, 2018), [http://sfhs.fiu.edu/Contents/Presentations/SFHS\\_pres\\_2018\\_08\\_22.pdf](http://sfhs.fiu.edu/Contents/Presentations/SFHS_pres_2018_08_22.pdf)

<sup>14</sup> Siddarth Narayan et al., "The Value of Coastal Wetlands for Flood Damage Reduction in the Northeastern USA," *Scientific Reports* 7 9463 (2017), <https://www.nature.com/articles/s41598-017-09269-z>; Borja G. Reguero et al., "Comparing the cost effectiveness of nature-based and coastal adaptation: A case study from the Gulf Coast of the United States," *PLOS ONE* 13(4) (2018): e0192132, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0192132>; Karen Thorne et al., "U.S. Pacific Coastal Wetland Resilience and Vulnerability to Sea-Level Rise," *Science Advances* 4, no 2 (2018), <http://advances.sciencemag.org/content/4/2/eaao3270.full>; Keri B. Watson et al., "Quantifying Flood Mitigation Services: The Economic Value of Otter Creek Wetlands and Floodplains to Middlebury, VT," *Ecological Economics* 130 (2016): 16-24, <https://www.sciencedirect.com/science/article/pii/S092180091630595X>; U.S. Army Corps of Engineers, "Charles River Natural Valley Storage Area," (presentation, draft master plan public meeting, April 2017), [http://www.nae.usace.army.mil/Portals/74/docs/Civil%20Works/Charles%20River/Charles\\_River\\_Natural\\_Valley\\_Storage\\_Area\\_Presentation.pdf](http://www.nae.usace.army.mil/Portals/74/docs/Civil%20Works/Charles%20River/Charles_River_Natural_Valley_Storage_Area_Presentation.pdf)

<sup>15</sup> Federal Emergency Management Agency, "Loss Avoidance Study: Eastern Missouri, Building Acquisition. Part One: General Overview," (2009), <https://www.hsd.org/?view&did=30195>; Federal Emergency Management Agency, "Loss Avoidance Study Wisconsin, Property Acquisition and Structure Demolition, Part One: General Overview," (2009), [https://dma.wi.gov/DMA/divisions/wem/mitigation/docs/stories/Wisconsin\\_LAS\\_11-09-09.pdf](https://dma.wi.gov/DMA/divisions/wem/mitigation/docs/stories/Wisconsin_LAS_11-09-09.pdf)

<sup>16</sup> Florida Division of Emergency Management, "Loss Avoidance Assessment: Hurricane Matthew (DR-4283)," (2017), [https://www.floridadisaster.org/globalassets/importedpdfs/01\\_dr-4283-loss-avoidance-report.pdf](https://www.floridadisaster.org/globalassets/importedpdfs/01_dr-4283-loss-avoidance-report.pdf); Florida Division of Emergency Management, "Loss Avoidance Assessment: Tropical Storm Debby" (2012), <https://www.floridadisaster.org/globalassets/importedpdfs/report-tsdebby-la.pdf>

<sup>17</sup> National Institute of Building Sciences and Multihazard Mitigation Council, "Natural Hazard Mitigation Saves: 2019 Report," (2019), <https://www.nibs.org/page/mitigationsaves>

the Council noted that “[r]obust mitigation policies at the state and local level are critical to reducing risk.” The same report calls on the agency to “use innovative methods to incentivize state and local agents to mitigate the risks they are most likely to face” and specifically states that “post-disaster recovery funding should be at least partially dependent on implementation of disaster mitigation protocols at the state and local level.”<sup>18</sup>

Pew concurs and encourages FEMA to consider the current proposal in the broader context of existing mitigation and resilience needs. Although FEMA asserts that the proposed change in COA would “incentivize Applicants to invest more in response, recovery, and mitigation capabilities, and increase overall national preparedness for incidents,” the proposal does not contain any substantive incentive or mechanism that would drive states to redirect or increase funding for mitigation activities.<sup>19</sup> As written, adjusting the COA would very likely shift certain costs away from the federal government without changing the level of investment in hazard preparedness and mitigation.

### **Possible further delay and alternative paths forward**

The current proposal comes at a time of great uncertainty about the next phase of the COVID-19 pandemic and how the outbreak will continue to affect the economy and the capacity of state and local budgets. That uncertainty, combined with the aforementioned drawbacks of the current proposal, indicates that FEMA should consider delaying the next phase of this rulemaking. Pew suggests that in place of making these standalone changes to the PA declaration factors, FEMA convene a working group of key stakeholders to develop recommendations and eventual policy changes. The task for such a group would be to develop workable policy recommendations, grounded in evidence, that avoid simply transferring costs between levels of government during a time of budget uncertainty and instead put the nation on an effective path to equitably sharing the challenges and burdens of natural hazard risk management and preparedness. Ideally, these policies would manage federal costs while establishing mechanisms that reward forward-thinking, strategic investments in resilience by state and local governments.

Such a group could include representatives from federal agencies, state, territorial, and local associations, issue area experts, and the private sector. These stakeholders would be well suited to evaluate the numerous existing policies and proposals aimed at managing federal disaster costs and incentivizing state and local resilience and to provide recommendations as to how FEMA can move forward with its goal to reduce the number of declared disasters while fostering increased mitigation and preparedness. Although this rulemaking proposal does not directly influence how disaster declarations involving tribal lands are made, it might also be valuable for representatives of tribal governments to have the opportunity to participate in any advisory group deliberations.

Such a review could specifically consider the merits of the current proposal and how changes to the COA factors could be combined with FEMA’s “disaster deductible” concept. The deductible concept, as

---

<sup>18</sup> National Advisory Council, “National Advisory Council Report to the FEMA Administrator,” (2020), [https://www.fema.gov/sites/default/files/documents/fema\\_nac-report\\_11-2020.pdf](https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf); National Advisory Council, “National Advisory Council Report to the FEMA Administrator,” (2019), [https://www.fema.gov/sites/default/files/2020-08/fema\\_nac-report\\_11-2019.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_nac-report_11-2019.pdf)

<sup>19</sup> Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 85 Fed. Reg. 80719 (Dec. 14, 2020), p. 80731, <https://www.federalregister.gov/documents/2020/12/14/2020-27094/cost-of-assistance-estimates-in-the-disaster-declaration-process-for-the-public-assistance-program>

previously proposed, would have altered the current construct that provides federal assistance for disaster costs starting with the first dollar of damage once a simple threshold is met, even in cases where a state had failed to prepare for known hazards. The deductible approach would encourage preparedness by “crediting” certain pre-disaster mitigation investments similarly to the way an individual’s personal spending earns “credit” toward an insurance deductible. By incentivizing and crediting state investments—for example, in adoption and enforcement of up-to-date building codes—and by allowing the policy to be phased in over time, this approach could improve resilience and lower disaster costs overall. By fostering a robust stakeholder exchange and dialogue on a full range of options for evaluating disaster thresholds, including options laid out in the deductible proposal, FEMA and its partners may be able to jointly construct a fair and workable system that both maintains needed federal assistance and promotes resilience efforts at all levels of government.

Stakeholder sessions, following on FEMA’s scheduled public meeting regarding this rulemaking, would be keeping in spirit with legislative language from the Disaster Recovery Reform Act of 2018 that FEMA “engage in meaningful consultation with relevant representatives of State, regional, local, and Indian tribal government stakeholders” in assessing COA adjustments as well as similar language in the fiscal year 2021 omnibus appropriations bill referenced above.<sup>20</sup> The group could also undertake a broader review of PA factors not considered by FEMA in this rulemaking, including the insurance and hazard mitigation factors, as well as issues of equity recently highlighted in FEMA’s National Advisory Council report.<sup>21</sup> Finally, if appropriate, this group might also revisit the recently finalized rules regarding use of TTR for Individual Assistance declarations. If it is determined that the use of TTR alone impedes considerations of equity, poverty, and unequal ability to recover from disasters, then changes to that rule may also be appropriate.

Pew appreciates FEMA’s efforts to comport with the legislative mandate to assess PA factors and to seek more holistic solutions to the nation’s growing disaster risk and fiscal exposure. We hope that the agency’s next steps continue to include thoughtful consideration of the overall challenge of incentivizing resilience and seek to coordinate the numerous efforts happening at the federal, state, and local levels.

Sincerely,



Colin Foard, Manager  
Fiscal Federalism Initiative  
The Pew Charitable Trusts



Matthew Fuchs, Officer  
Flood-Prepared Communities  
The Pew Charitable Trusts



Velma Smith, Senior Officer  
Government Relations  
The Pew Charitable Trusts

---

<sup>20</sup> FAA Reauthorization Act of 2018, P.L. 115-254 § 1239(b), <https://www.congress.gov/bill/115th-congress/house-bill/302>; Consolidated Appropriations Act, 2021 (HR 133), *Congressional Record* 160: 218—Book IV (Dec. 21, 2020)

<sup>21</sup> National Advisory Council, “National Advisory Council Report to the FEMA Administrator,” (2020)