



FEMA Public Assistance: Recent Decisions and Trends

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Introductions



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Agenda

- **Category B Claims**
- **Justifying Roof Repairs and Replacements**
- **Insurance Issues**
- **Consistency in FEMA's Decision Making**
- **Stafford Act Section 705(c)**
- **State of FEMA and Where We Are Going**
- **Questions?**



Category B Claims

Category B Emergency Protective Measures (EPM) are eligible for Public Assistance only when they are:

- Necessary to eliminate or lessen an immediate threat to life;
- A public health or safety; or
- To prevent immediate threats of significant additional damage to improved property.

PAPPG v.5 at 130.



Category B Claims

What could be eligible? FEMA's non-exhaustive list includes:

- Debris clearance/push work
- Providing security
- Provision of supplies and commodities
- Mold remediation and other measures to prevent further damage

FEMA takes a narrow view of this non-exhaustive list, resulting in DMs.



Category B Claims

Recent Denial Trends

1. Characterization as Routine Operations:

- Typically occurs when where the activities existed prior to the incident, would have occurred absent from the disaster, or were performed using the applicant's "blue skies" staff, systems, or contractors. FEMA has treated expanded staffing, increased hours, and enhanced administrative effort as non-emergency operating costs rather than eligible EPMs.

2. Non-Enumerated EPM:

- Despite the PAPPG including a non-exhaustive list, FEMA increasingly treats its lists of eligible EPMs as exhaustive. If FEMA concludes that the scope of work does not squarely fit within a recognized EPM category, it has denied projects in full stating the project included ineligible activities.



Category B Claims

Recent Denial Trends

3. Increased Operating Costs:

- FEMA has repeatedly denied claims by characterizing them as increased operating costs, even where applicants demonstrated that the costs were disaster-related.

4. Commingled Work:

- FEMA has issued negative determinations on entire projects when documentation includes non-disaster related tasks, even when those costs are not being claimed. In the past, FEMA has allowed jurisdictions to highlight the costs being claimed and understood the non-disaster costs weren't being requested for reimbursement.



Category B Claims

The “All or Nothing” Eligibility Issue

FEMA no longer has the appetite to parse individual line items in a Category B claim for eligibility.

If it is not readily evident that a claimed scope of work is eligible, FEMA is issuing wholesale denials of claims.

So how do we submit Category B claims that will survive FEMA’s eligibility review?



Category B Claims

Drafting Category B Scopes of Work

1. Explicitly define the immediate threat to public health and safety being addressed by the claimed work and why your routine processes are insufficient to address the immediate threat.
 - Specify the location, threatening conditions, and timeframe.
 - Develop disaster activity logs for your employees and contractors to use to track this information.
 - Train your staff before hurricane season on best practices to ensure this vital information is captured at the time the work is performed.



Category B Claims

Drafting Category B Scopes of Work

2. Describe discreet emergency tasks performed rather than general responsibilities.

- “Performing hurricane-related duties” = denial.
- Instead, “fill and place sandbags at City Hall to prevent building flooding as a result of Hurricane X.”
- “Provide traffic safety services in conjunction with debris removal to ensure the safety of drivers and debris removal crews.”
- The key is tying the work to the hurricane, not routine operations.



Category B Claims

Drafting Category B Scopes of Work

3. Keep it separate. Track disaster related activities separately from routine activities.
 - For example, emergency medical services (EMS) may assist with evacuating people from medical facilities, nursing homes, or other facilities before, during, and in the immediate aftermath of a hurricane. That time, which is the direct result of the disaster, should be tracked separately from time responding to routine calls for service.
 - Consider creating disaster specific cost codes to easily track disaster-related work from routine work. Or include disaster name in dispatch records.



Category B Claims

Drafting Category B Scopes of Work

4. Draft the scope of work with precision.
 - Mimic the language in FEMA policy to increase chances of eligibility.
 - When possible, fit the discreet tasks into those enumerated in the PAPPG as eligible emergency protective measures.
 - How does the work "save lives," "protect public health and safety," "protect improved property," or "eliminate or lessen an immediate threat of additional impacts and damage?"



Category B Claims

Documentation

- Ensure a robust system is in place prior to the disaster to manage the tracking of your Category B supporting documentation.
- Ensure your contractors are aware of the FEMA documentation requirements as well.
 - Do not assume contractor knows how to document to detail expected by FEMA.
 - Increasingly, FEMA is applying the requirements for force account labor documentation to work performed by contractors.



Roofs in Florida

Disaster damage or deferred maintenance?



Roofs in Florida



- The Applicant must prove that the hurricane damaged roof – or any damaged infrastructure – was maintained and in good condition prior to the disaster.
- FEMA reviews:
 - Three (3) years of maintenance records and/or inspection reports;
 - Maintenance policies and procedures and evidence these policies/procedures are followed; and/or
 - GPS imaging or other publicly available information to determine pre-disaster conditions.

Roofs in Florida



Demonstrate that the disaster caused the claimed damage:

- Disaster-caused damages are damages that were incurred as a direct result of a major emergency or disaster event.
- Documenting damages **immediately** and thoroughly post-disaster is essential for successful project formulation and reimbursement.
 - Set up a yearly roof assessment program and, if deficiencies are observed, **document fixing** those issues.
 - Post disaster, use engineering and architectural professionals to produce thorough reports that include photos shortly after the event.
 - Take photos prior to remediation, tarping, and temporary repairs.

Case Study: Roof damage at a Florida High School – Hurricane Irma



- Following Hurricane Irma, a Florida School District began replacement of a severely damaged high school roof only 43 days after the disaster.
- The School District did not perform a formal roof assessment because the severity of interior leaks indicated the need for a total roof replacement.
- Additionally, the School Board's insurer determined the roof required replacement and provided a letter confirming its replacement determination.

Case Study: Roof damage at a Florida High School – Hurricane Irma



- FEMA denied the claim, citing lack of photos and inspection reports identifying disaster damages.
- FEMA's determination was upheld in arbitration:

██████████ must have known when it was removing the roofs at ██████████ High Schools, an expedited effort that began within weeks after Irma hit, that it was going to ask FEMA to reimburse its roof replacement costs. Yet, it did not make any serious effort to document the original investigation of the roofs at the schools, if it undertook one, to establish a need for replacement rather than repair or to document its actual decision to replace rather than repair. Any documented replacement-versus-repair analysis was



Roofs in Florida

The 25% Rule (Florida Building Code Section 706.1.1):

- For roofs built prior to 2007, if more than 25% of a roof or window system is repaired or replaced within a 12-month period, the entire system must be upgraded to meet current, stricter building codes.
- Use of the 25% Rule to justify roof replacement must be documented by a licensed professional.
- If you can, include your local building official in the determination. FEMA consistently argues that the 25% Rule is improperly applied by applicants.



Insurance

An often overlooked and misunderstood part of the Public Assistance process that could cost your entity millions.





Insurance

Stafford Act § 312 (42 U.S.C. § 5155(c))

“[a] person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.”

The statute makes clear that the prohibition against duplication of benefits only applies when the assistance provided by FEMA would in fact duplicate the other resource.



Insurance

Insurers often provide lump sum payments, and FEMA applies the full amount of proceeds received against your otherwise eligible funding.

But what if your coverage includes FEMA-ineligible items like business interruption?



Insurance

If applicants receive insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, Public Assistance Policy on Insurance,²³⁶ describes insurance reductions in detail.

PAPPG V5 at 111



Insurance

- FEMA typically ignores this policy and you must present an apportionment calculation.
- A School Board in Florida secured \$100 million in proceeds for its property insurance claim.
 - The insurance policy included FEMA eligible property damage as well as FEMA ineligible business interruption.
 - Despite repeated requests, FEMA refused to apply the insurance apportionment methodology.



Insurance

- Following a long process that involved a First Appeal and arbitration, the School Board was successful. The Panel of judges concluded:

“To avoid duplicating the School Board’s insurance benefits, FEMA reduced the School Board’s PA funding for otherwise eligible projects by \$100,000,000. The School Board argues that its PA funding should not be reduced by the full \$100,000,000 because a portion of the insurance proceeds covered losses that are ineligible for PA funding. **We agree and find that FEMA must calculate an apportionment of the insurance proceeds based on the ratio of the School Board’s total PA-eligible losses to its total ineligible losses.**”

Civilian Board of Contract Appeals (CBCA) 8432-FEMA at 1-2.



Insurance

- What happens if an insurer allocates insurance proceeds?
- A hospital system in Louisiana secured a \$75 million payment that the insurer allocated in a letter as follows:

Payment has been allocated as follows:

Building:	\$50,000,000
Contents:	9,000,000
Time Element:	16,000,000



Insurance

- In this instance, the CBCA held that the insurer's allocation is an appropriate way to determine which insurance proceeds are in fact duplicative of FEMA eligible work. CBCA 8005-FEMA.
- What happens if your insurer agrees to allocate all proceeds to FEMA ineligible business interruption?



Insurance

- After Hurricanes Helene and Milton, FEMA issued guidance stating that if the jurisdiction can't determine if the damages were caused by Hurricane Helene vs. Milton, to capture the damages under Hurricane Milton.
- FEMA PA project formulation must still match the Statement of Loss and final insurance claims.
 - If the Statement of Loss says, Helene damaged it, then the damage inventory line item and PA Project needs to be captured under Hurricane Helene DR4828.



Consistency in FEMA's Decisions

Lack of consistency is one of those most frustrating aspects of FEMA Public Assistance.

But it can also provide opportunity.





Consistency in FEMA's Decisions

- FEMA denied a \$9 million contract labor claim for a healthcare organization in Missouri (COVID).
- Subsequent to that denial, FEMA approved a much smaller claim, approximately \$50,000, of costs incurred from the same contractors and involving nearly identical forms of documentation.
- During arbitration, this healthcare organization pointed out this inconsistency.



Consistency in FEMA's Decisions

“FEMA tells us that the only difference between that project and the matter pending before us is that the project . . . permitted was in a different region and was decided by different approving officials than the...matter [at issue]. Because FEMA policy expressly requires consistent implementation and application of policies and regulations across the Nation, and because denial of PA funding here would create an inconsistency with FEMA's decision to allow the use of the proportional allocation method at issue here in another matter, we must grant [the applicant's] request for PA funding.” CBCA 8460-FEMA at 2.



Consistency in FEMA's Decisions

- Talk to your neighbors to see how FEMA is treating their projects.
- Don't be afraid to FOIA your state disaster agency for similar projects.
 - FDEM does a great job of responding!
- However, be careful about citing specific projects. FEMA has been known to not only deny the claim but also seek de-obligation of the cited project.
 - Cost/benefit analysis is key.



Stafford Act Section 705(c)

- “Disaster Grant Closeout Procedures” added to the Stafford Act in 2000 in response to Congressional concern with FEMA decisions which clawed back disaster assistance years after the funds had been spent.
- Declares that state and local governments “shall not be liable” for reimbursement or any other penalty (including deobligation) if certain conditions were met.



Stafford Act Section 705(c)

- (c) BINDING NATURE OF GRANT REQUIREMENTS* - A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if -
- (1) the payment was authorized by an approved agreement specifying the costs;
 - (2) the costs were reasonable; and
 - (3) the purpose of the grant was accomplished.

How does FEMA interpret these conditions?



Stafford Act Section 705(c)

- Payment was authorized by an approved agreement specifying the cost.
 - Payment occurs at draw down by Recipient
 - Disbursement to Subrecipient is not required for there to be a “payment.”
 - The “approved agreement specifying the costs” = obligated PW + the governing FEMA-State/Territory/Tribe Agreement.
 - “Project eligibility decisions detailed in a PW obligated in accordance with standard procedures are authorized by an ‘approved agreement,’ **even if FEMA erred** in applying law, regulation, or FEMA policy to the eligibility decision and where Section 705(c) applies.”



Stafford Act Section 705(c)

- The costs were reasonable.
 - “A cost is reasonable if in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”



Stafford Act Section 705(c)

- The purpose of the grant was accomplished.
 - Determination Factors:
 - Applicant completes scope of work described in the PW
 - Demonstrates compliance with post-award Ts&Cs, including:
 - Procurement
 - Obtain & Maintain Insurance Requirement
 - EHP Compliance
 - Timing: “Typically, whether the purpose of the grant was accomplished will be determined during the project closeout process.”
 - Small: P.4 or letter certifying completion of all small projects.
 - Large: review of project documentation at project closeout.
 - Non-compliance = purpose of grant was not accomplished and 705(c) does not apply



Stafford Act Section 705(c)

- Duplication of Benefits
 - FEMA says it can reduce or recover funding due to a DOB “at any time post-award”
- Failure to Provide Information to FEMA
 - If the failure to provide “all necessary information...materially impacts FEMA’s determination” re eligibility, cost, or compliance, then no 705(c) protection.



Stafford Act Section 705(c)

“Here, the applicant failed to provide FEMA with information regarding pre-existing damage at the facility. The reference to the engineering firm repairing a pre-existing condition was not sufficient to put FEMA on notice that pre-disaster damage had been identified and not repaired. Moreover, costs to complete the project cannot be reasonable if there was a project eligibility error. *Id.* As a result, section 705(c) does not preclude FEMA from rescinding its eligibility determination and recovering funds from the applicant.”

In the Matter of City of Brenham, Texas, CBCA 7589 (Apr. 14, 2023).



Stafford Act Section 705(c)

“FEMA further determined that its prior decision to authorize PA funding to repair the roadway surface and base was made in error, but it recognized that section 705(c) of the Stafford Act, 42 U.S.C. § 5205(c), precluded it from deobligating those previously-awarded funds.”

In the Matter of Monroe Cnty. Eng’r, CBCA 7325 (Aug. 8, 2022).



Stafford Act Section 705(c)

“When FEMA closed out each of these projects, it determined eligible costs and verified that the scope of work was completed and the projects complied with terms and conditions of the award. At that time, FEMA did not take action to recover payments based on the Applicant’s or Grantee’s failure to provide all necessary information, ... Therefore, Section 705(c) prohibits FEMA from recovering these payments even though the OIG made audit findings with which FEMA agreed. As such, FEMA will reobligate \$901,138.34 in funding.”

Second Appeal Analysis, City of Lake Worth Beach, Hurricanes Frances, Jeanne, and Wilma (Sept. 2022).



The State of FEMA and Where We Are Going

- Partial Shutdown is over and DRF is replenished
- New DHS and FEMA leadership
 - Secretary Mullins removed \$100k DHS review queue, however recent funding legislation reduced the Large Project Review queue to \$100k
 - Acting Administrator Fenton appointed earlier this week
 - Cameron Hamilton nominated for FEMA Administrator
- FEMA implementing State-Led Disaster Operations for recent Winter Storm Fern declarations
 - No FEMA PDMG



The State of FEMA and Where We Are Going

- FEMA not immediately approving full Category C-G with Major Disaster Declaration.
 - FEMA did not declare Category G (Parks, Beaches, etc.) on recent Hawaii Major Disaster Declaration.
 - FEMA did not initially declare Category F (public utilities) for Michigan and upheld initial decision upon formal Appeal.
 - Eventually reversed decision of organized public and political pressure.
- Recent release of COVID funds



The State of FEMA and Where We Are Going

- There are two efforts that are anticipated to be the potential drivers of future change to federal support for emergency management: FEMA Review Council Final Report & the proposed *FEMA Act of 2025*.

FEMA Review Council

The President established the FEMA Review Council through a January 2025 Executive Order (EO 14180). Its goal is to “advise the President [...] on the existing ability of FEMA to capably and impartially address disasters” and recommend “changes related to FEMA to best serve the national interest.” The Council presented the Final Report last week and submitted the report to the President.

FEMA Act of 2025

Introduced to the House on 7/23/2025, sponsored by Representatives Sam Graves (R-MO) and Rick Larsen (D-WA). This bill has bipartisan support, as evidenced by its sponsorship and the Committee on Transportation and Infrastructure – which oversees FEMA’s statutory authority under the Stafford Act – voting 57-3 in September 2025 to advance it to the full House of Representatives.



The State of FEMA and Where We Are Going

Review Council Report:





- Increase of the per capita indicator threshold and alternative criteria for PA declarations.
- Reduced federal share minimum to 50% with an option to increase to 75%.
- Replace PA with new block grant called the “Reformed and Partnered Initiative for Disasters” (RAPID) that delivers assistance to State, Tribes, and Territories (STTs).
- Convert legacy open disasters to new RAPID Direct Funding program.

Draft FEMA Act of 2025:

- Estimate-based capped grants that acts under the presumption of accuracy and gives FEMA 90 days to obligate.
- Maintains 75% cost share but may shift 10% in either direction based on mitigation actions.
- Block grant option for small disasters.



The State of FEMA and Where We Are Going

Recommendation	Minimum Action Required to Implement			
	Policy 	Legislation 	Regulation 	Executive Order 
#1 Equip SLTT to Lead	✓			
#2 Enhance Critical Programs	✓		✓	
#3 Realign Criteria for Assistance			✓	
#4 Replace HMGP		✓		
#5 Streamline IA		✓		
#6 Reform PA		✓		
#7 Reform NFIP		✓		
#8 Reduce Admin Costs				✓
#9 Network for Partnership	✓			
#10 Transform FEMA		✓		✓

Next steps for proposed reforms in FEMA Review Council's final report.



The State of FEMA and Where We Are Going

How States and Local Governments Can Prepare Now

- **Federal thresholds for assistance are likely to increase.** States and locals should be prepared to shoulder a greater share of response and recovery costs by strengthening disaster reserve funds, insurance coverage, pre-negotiated contracts, and surge and recovery management capabilities.
- **States and locals have greater responsibility on how quick funding flows.** States and locals should ensure financial controls, policies and systems are in place to manage funding quickly and responsibility. They should also plan how remaining costs will be covered – clarifying funding responsibilities, identifying potential gaps, planning for cash flow, and evaluating options such as reserve funds, cost-sharing strategies, or risk transfer mechanisms.



The State of FEMA and Where We Are Going

How States and Local Governments Can Prepare Now

- **Capability and capacity matter more than ever.** Now is the time to assess and invest in core capabilities – staffing, systems, programs, and operational frameworks.
- **Preparedness and mitigation are strategic investments.** Upfront investments in mitigation, planning, and risk reduction can directly influence level of future federal funding, recovery speed, and long-term resilience.

Questions?



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