



CITY OF NEW ORLEANS
C. Ray Nagin, Mayor

Stafford Act and Disaster Policy Changes March 2, 2007

Draft: includes bold italicized interpretive comments

New Orleans experienced a catastrophic disaster of epic proportions, and continues to battle through the most complex disaster recovery ever undertaken by any American community. City leadership has had first-hand experience of the Robert T. Stafford Act, of the operational challenges involved with its implementation and the troublesome inconsistencies in its application to our circumstance. Though we applaud the discretion the Act's drafters afforded in their effort to anticipate all eventualities, many of its provisions are not helpful or workable in a disaster situation of Katrina and Rita's magnitude.

Please accept this list of suggested changes to the Stafford Act to begin discussion on what we hope will be an overhaul of the Act and its implementing regulations. We ask that future changes be made retrospective so that New Orleans can benefit from them, and that those implemented in 2006 are automatically applied to the Katrina and Rita disasters, the first and third worst storms in the nation's history.

Catastrophic Disasters:

Recognize the need for and establish a magnitude formula for the designation of a “**catastrophic disaster**” to differentiate those of more devastating impact (e.g., over 50% of structures damaged within a political jurisdiction and/or over 50% of population of a jurisdiction displaced for a period of time) from the category of “major disasters” currently addressed in the act. This designation should trigger:

- Mandate the rapid implementation of Immediate Needs Funding (advance on emergency costs).
 - *INF is a program allowing FEMA to advance applicants up to 50% of an estimate for emergency costs (categories A & B) shortly after a declaration. The State currently has the ability to use or not use the INF program. This can mean that it is not made available at all, or that a lengthy delay in making a final decision and implementing the program negates its intended benefits.*
- Lengthen and align all deadlines found in current FEMA policy for requesting and obtaining both individual and public assistance for a minimum of 12 months.
 - *Much time and energy was spent after the disaster trying to keep up with varying deadlines that in a catastrophe would be better spent tending to the disaster.*
- Provide automatic 100% federal funding for all categories of eligible work (inclusive of both straight and overtime for force account employees performing eligible emergency work).

- *Currently, FEMA pays straight and overtime for permanent repair work, but only overtime for emergency work. The premise is that the work (emergency) during the first eight hours of the day was what that person would have been doing anyway. However, this could also be said for straight time permanent work, currently covered by Stafford). Additionally, in a catastrophic event when revenue sources are disrupted, making any payroll for the first few months following the event is a daunting challenge.*
- A liberal and uniform application of section 301 (Waiver of Administrative Conditions) on issues such as:
 - Note that Section 301 calls for a waiver of administrative conditions (requirements) if the reason an applicant cannot meet those requirements is due to the disaster that triggered the declaration.*
 - Emergency contracts and purchases.
 - *Provide additional flexibility relating to what an applicant does under duress and when time cannot be wasted by formalized selection processes.*
 - Debris removal on and from commercial and private property.
 - *Reduce the administrative burden an applicant faces when the debris has to be immediately removed for health and safety reasons, regardless of where it is or to whom it belongs.*
 - Mutual aid.
 - *Understand that immediately after a catastrophic event, people help people. The requirement for a formal agreement enacted prior to the event that allows the aid to be given with financial parameters laid out is not reasonable in catastrophic cases.*
 - Waive or cap the total amount of Mandatory National Flood Insurance Program (NFIP) Reductions that can be applied to a single applicant with the realization that an exorbitant amount of reductions will prohibit recovery.
 - *When applicants have a significant number of facilities that are penalized, their overall ability to recover fully is challenged. For example, an applicant with 50 uninsured facilities in the Special Flood Hazard Area (SFHA) could theoretically produce \$50,000,000 in penalties - an amount even the largest cities in the country would find hard to overcome.*
 - Not requiring an applicant to obtain more flood coverage than is available from the federal government (NFIP); specifically in areas where coverage is not readily available, practical and/or affordable.
 - *Requiring an applicant to obtain commercial flood insurance for amounts over what the NFIP provides is neither affordable nor practical for applicants with numerous insurable facilities. There are provisions in Stafford for the requirement to be waived by the State Insurance Commissioner, but this process can lead to great inconsistencies across the country, and within the state affected. (Each applicant must apply individually for the waiver.) It would be more consistent to do one or more of the following: waive the need for commercial insurance above the amount available from the NFIP; raise the amount available from the NFIP; establish a cap for the aggregate amount of insurance required for that category of applicant (i.e. those with numerous facilities).*
- Change to the Community Disaster Loan Program (CDL) to include:
 - The removal of the \$5 million cap to match the allowed revenue loss percentage under the CDL Program for future disasters
 - A reinstatement of the “forgiveness” clause for the CDL Program
- Provide for equipment and vehicles to be treated equivalent to facilities with replacement in cases of over 50% damage.

- *This provision should be changed for all disasters, not just “catastrophes” but has been particularly onerous for the City of New Orleans in this catastrophe. Eligible costs for vehicle and equipment replacements, specifically those needed for emergency response, critical recovery activities and public transportation, should be for that of a comparable “New” item as opposed to “Blue Book” valued or hard-to-locate replacements. The current FEMA policy is to replace these items with what you had: e.g., a 6 year old police car can be replaced with a 6 year old police car. FEMA will buy a new police car to use for the emergency period, but only reimburse for the used, engendering a very complicated and costly adjustment and reconciliation process. The policy does say, however, that if a used replacement cannot be found within a “reasonable amount of time and distance” a new replacement is eligible for reimbursement. Immediately after catastrophic event “a reasonable amount of time” is very short, indeed immediate, and for specialized equipment “a reasonable distance” is directly to the manufacturer who made the original item.*
- An increase the federal share for the Hazard Mitigation Grant Program to 100% under the realization that a “catastrophic disaster” leaves most jurisdictions unable to meet a 25% matching requirement for desperately needed mitigation measures, which risks subverting the entire intent of the HMGP in those communities that need it the most.
- Prescribe a more liberal application of section 312 (b) (1) which does not prohibit FEMA from funding a project where duplicate proceeds may be obtained, if those proceeds have not yet been obtained. This is particularly applicable for those applicants with large and complex insurance claims which may take years to settle.
 - *FEMA is allowed to pay in advance of insurance, when the insurance has not yet been received. They should be mandated to do so in catastrophic events.*
- Allow for special provision under Individual Assistance to fund transportation costs for households and businesses wanting to return to their community

Other Suggestions:

In addition to changes recommended for a “catastrophic disaster” we suggest consideration of the following general changes:

- Fund and direct FEMA to establish a National Sheltering Plan that identifies regional shelters capable of housing thousands of evacuees and/or victims from a natural disaster or a terrorist attack.
- Fund and direct FEMA to establish a National Transportation Evacuation Plan that incorporates all modes of transportation--rail, air and commercial bus--and clearly defines roles and responsibilities for preparing major evacuations.
- Recognize and fund mandatory precautionary evacuations, specifically in those areas with significant catastrophic risk profiles combined with high populations.
- Develop a uniform process for the advance of funds for permanent work under the Public Assistance program, and require states to implement the advance process accordingly.

- Permanently adopt the “Demolish-Rebuild” (Pilot) Program and make it an eligible activity under FEMA’s HMGP.
- Enhance the provision of transitional housing to displaced residents and response workers by removing restrictions that prevent interim work on permanent structures that could provide critical temporary and transitional housing.
- Change the definition of “household” so that domestic violence victims and households that need to separate temporarily in order for one member to return to work are not penalized.
- Ensure that households and other eligible individual assistance recipients do not have **grant** amounts reduced, based on the receipt of a **loan** from the SBA.
- Allow for a percentage of State management/administrative costs to be allocated to the local level or increase the applicant administrative allowance to a more realistic level (5%).
 - *Currently applicants receive a percentage based administrative allowance that amounts to \$51,000 for the first \$5,000,000 of eligible costs and 1/2% of anything over \$5,000,000; this is far short of the costs that applicants are actually incurring, specifically those short on staff.*
- Authorize and fund a complete overhaul of the CFR’s (including related guides, handbooks and policies) governing disaster response and recovery not only to address current inadequacies of available response to disasters of the magnitude of Katrina and Rita, but to reflect other lessons learned for the benefit of victims of all future disasters.
- Create standards for the selection, training, placement, tenure and compensation of FEMA employees (full time and contract) in order to minimize turnover and establish adequate and consistent qualification requirements. Specifically, ensure that:
 - Policies and procedures are fully understood;
 - Application and implementation of policies and procedures are consistent;
 - Crucial decisions regarding an applicant are only made by those uniquely qualified to make them; and
 - Staff transitions are less frequent, and when they do occur a meaningful exchange of all pertinent information takes place, as opposed to simply handing over a file.
 - *Currently most of the staff involved has been inexperienced in both their area of “purported expertise” and the FEMA Programs. FEMA and those holding the master technical assistance contracts must be accountable for those sent to administer disaster relief programs.*
- Require the recognition that the definition of “reasonable costs” as found in OMB A87 includes evaluating the circumstances for which a decision was made at the time it was made, which is a far more expansive definition than FEMA’s current restrictive interpretation.
- Define and enforce criteria and succinct timelines for the “million dollar queue” process.
 - *Shorten the process and specifically ensure that versions/revisions to a project that has been through the million dollar queue, regardless of the dollar amount, do not go through the queue again.*

- Elevate the threshold for small projects to a more realistic level (< \$100,000) to allow more expeditious funding as well as reduced management costs for FEMA, the State and the applicants.
- Add an exception to the “eligible cost” determination to allow repairing, restoring, reconstructing or replacing a public facility or private nonprofit facility beyond the basis of the design as it existed immediately prior to the disaster if it provides for energy efficiency and the measures can be shown to be cost-effective. (This could be parallel to provisions for eligible upgrades to meet requirements of current codes and standards.)