



FEMA

MEMORANDUM FOR: James Featherstone
Chairman, FEMA National Advisory Council

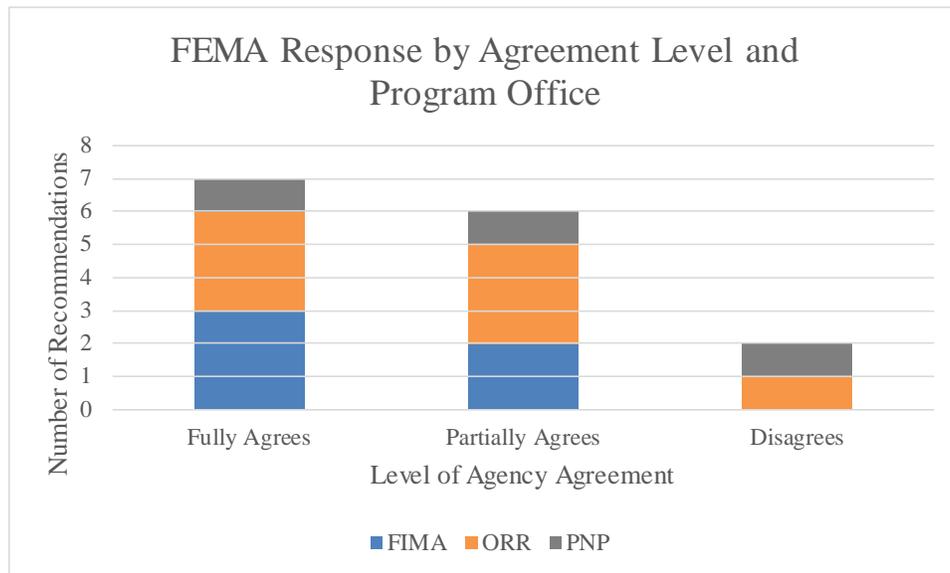
FROM: W. Craig Fugate Administrator 

DATE: February 5, 2016

SUBJECT: Response to FEMA National Advisory Council Recommendations

Thank you for your letter dated October 16, 2015, regarding the FEMA National Advisory Council (NAC) recommendations from the September 2015 NAC meeting. Attached, please find a table representing FEMA's level of agreement (e.g., FEMA fully agrees, partially agrees, or disagrees) with each of the NAC's recommendations.

Of the 15 recommendations, FEMA fully or partially agreed with all but two recommendations. FEMA fully agrees with seven recommendations and partially agrees with six recommendations. See the below graphic depicting how the level of agreement correlated to the NAC's 15 recommendations:



For the recommendations with which FEMA fully or partially agrees, the Office of the NAC will work with the FEMA program offices to track progress implementing them.

FEMA disagrees with recommendation #2016-07, as the options for excess funds are consistent with the provisions authorized by law. In addition, FEMA does not have empirical evidence at this time to indicate that these options are unnecessarily limiting or concerning what additional options should be made available within the authority provided. At this time, there have not been enough of these projects that have undergone final reconciliation to provide such evidence. FEMA disagrees with recommendation #2016-13, as this recommendation cannot be implemented without Congressional action.

I. NFIP Operations

Issue: NFIP's structure and function were inadequate to meet Hurricane Sandy related challenges.

NAC Recommendation 2016-01: FEMA should advance training and professional conduct for the NFIP by:

- 1) Exploring and implementing best practices in the insurance industry to train, assist, and evaluate adjusters;
- 2) Developing and requiring ongoing professional education for adjusters and engineers who support the claims adjusting process; and
- 3) Developing a method to track the performance of adjusters and field engineers.

FEMA Response 2016-01: FEMA fully agrees with the recommendation, but wishes to point out the following:

- 1) FEMA has developed NFIP Adjusting Best Practices to train and assist adjusters and Write Your Own claims examining staff. Adjuster training is available 24/7 online at the FEMA Emergency Management Institute website. Independent adjusters are required to complete four online classes for re-issuance of their Flood Control Number. The NFIP expects all NFIP flood adjusters to maintain a level of personal professional experience, including: 1) Residential and commercial estimating experience; 2) A working knowledge of the Standard Flood Insurance Policy (SFIP) and its specific forms; 3) A working knowledge of the NFIP Adjuster's Claims Manual; and, 4) An understanding of the NFIP claims bulletins and/or Fact Sheets. Independent Adjusting firms also offer ongoing adjuster training for their own flood adjusters and are required to submit training plans and detailed curricula to the flood carriers with which they contract, such as the NFIP Direct Servicing Agent or a Write Your Own company.
- 2) "Just in Time" training is performed at the outset of named flood events as adjuster briefings by NFIP General Adjusters and FEMA staff. As stated, adjuster training is now available online 24/7 access through FEMA's Emergency Management Institute. The NFIP Claims Adjuster Manual is fluid and will be updated as the need arises. Professional engineering is a profession that is licensed by each state and has its own set of industry best practices. FEMA agrees that the Program should ensure that the engineering firms and engineers are in good standing within the affected states.
- 3) Several WYO Companies track adjuster performance. FEMA agrees with this recommendation and will look into developing a performance tracking method.

NAC Recommendation 2016-02: FEMA should provide consistent, accurate guidance regarding the NFIP for state/local/tribal partners by:

- 1) Developing clear, written guidance for policy coverage and claims adjustments; and
- 2) Hiring cadre staff focused on Quality Assurance/ Control to correct errors and recognize event specific trends such as wind versus flood damage (e.g., Hurricane Katrina) or foundation issues (e.g., Hurricane Sandy).

FEMA Response 2016-02: FEMA full agrees with the recommendation. For part 1, FEMA developed a Claims Process Fact Sheet and an Appeals Fact Sheet. The Flood Insurance Claims Handbook explains the process and is available at www.FEMA.gov and at www.Floodsmart.gov.

For part 2, FEMA has piloted the Random Claims Quality Check (RCQC) process to rapidly identify and correct errors. The RCQC utilizes the NFIP General Adjuster staff and FIMA Risk Insurance Division staff to perform reviews of both open and closed claims during an event to ensure that staff are customer-centric, that they adhere to the Standard Flood Insurance Policy, and that they maintain consistency and quality in the processes. For any issues identified in the RCQC, FEMA takes the necessary corrective actions before the claim is finalized.

NAC Recommendation 2016-03: FEMA should institutionalize best practices for the NFIP. Before Hurricane Sandy, FEMA pre-authorized “partial payments of up to \$30,000 to cover building systems and related repairs when prompt action was necessary..., extended the time a survivor could submit a claim..., and instituted a rapid claims process.” FEMA should analyze the benefits and challenges of these proactive financial options and formalize them for future events. FEMA has effectively used an ad hoc appeals process and should formalize it into a standing task force for appeals.

FEMA Response 2016-03: FEMA fully agrees with the recommendation, but it is worth noting that FEMA has formalized best practices for the NFIP as set forth in the NFIP Adjuster Manual. The Appeals process was formalized by the May 26, 2006 adoption of a change shown in the Federal Register of that date. CFR 44 part 62 contains the formal Appeals process.

Additionally, FEMA is exploring revisions to implement a more survivor-centric approach to appeals based on Sandy experiences and to make the appeals process transparent and less cumbersome for policyholders. Advance (partial) payment of a claim has been available to NFIP policyholders for decades and is considered a claims best practice. The formal Appeals process is a codification of an informal process that was used for a decade prior to Flood Insurance Reform Act of 2004.

II. Flood Mapping

Issue: Current, granular maps are critical to effective flood plain management but are frequently unavailable.

NAC Recommendation 2016-04: As FEMA considers improvements to the mapping program through the TMAC recommendations, FEMA should implement a more granular and responsive approach to flood mapping that considers the extent of potential flooding, flood elevations, the effects of climate change, and the changing built environment.

FEMA Response 2016-04: FEMA partially agrees with the recommendation. The TMAC issued two interim reports. The goals and several of the recommendations in these reports align with NAC Recommendation 2016-04. FEMA is evaluating the TMAC recommendations and will have a formal response to the TMAC’s recommendations in 2016.

Additionally, FEMA is committed to promoting resilience as expressed in: the Presidential Policy Directive PPD-8: National Preparedness; FEMA’s Climate Change Adaptation Policy Statement (Administrator Policy 2011-OPPA-01); and FEMA’s 2014–2018 Strategic Plan.

III. Mitigation

Issue: Flooding is the most costly repetitive loss disaster America faces. Pre-disaster mitigation is critical to reducing repetitive losses.

NAC Recommendation 2016-05: FEMA should accelerate implementation of partial credit for partial mitigation efforts to identify premium credits for pre-disaster mitigation measures other than elevation. FEMA should also evaluate how different land use controls (i.e., buyouts, density) can be used to promote cost-effective pre-disaster mitigation.

FEMA Response 2016-05: FEMA partially agrees with the recommendation. FEMA published the report for Sec 26 of the Homeowners Flood Insurance Affordability Act (HFIAA) in September 2015. Concurrently,

FEMA released a new guidance document, *Reducing Flood Risk to Residential Buildings That Cannot Be Elevated*. This publication discusses alternative mitigation measures that residential property owners can use to reduce flood risk to residential buildings where it is not feasible to elevate due to the building's structural characteristics. It also addresses the potential of these measures to reduce flood insurance premiums under the NFIP. Homeowners can use the information to compare options for protecting their property from future flooding and reducing their flood insurance premiums now and in the future.

IV. Public Assistance Alternative Procedures (PAAP) Pilot Program

Issue: The Public Assistance Alternative Procedures (PAAP) Pilot Program is a more efficient and effective way to approach large Public Assistance projects, but it is only a pilot program.

NAC Recommendation 2016-06: FEMA should establish the PAAP Pilot Program as a permanent program and in doing so, FEMA should:

- 1) Enhance outreach efforts to ensure jurisdictions are aware of the program;
- 2) Provide additional training;
- 3) Train subject matter experts who can support the PAAP Program and offer guidance to state and local jurisdictions;
- 4) Ask jurisdictions that participated in the pilot to help develop permanent PAAP Program policy that specifically addresses Direct Administrative Costs and Benefit Cost Analysis processes.

FEMA Response 2016-06: FEMA partially agrees with the recommendation. In the fall of 2015, the Public Assistance program began a formal evaluation of the alternative procedures pilot programs as an effort to understand how to best enhance outreach efforts and develop and provide additional training. An evaluation of field work focuses on best practices, lessons learned, gaps, or inconsistencies in the alternative procedures program guidance and implementation. Until the program evaluation is complete, FEMA cannot agree or disagree with parts 1-3.

Regulatory action is needed for the PAAP program to become a permanent program, and the rulemaking process will require economic analysis. As permanent work projects may take years to complete, collecting results that will support such an analysis is limited. FEMA disagrees with part 4. Direct Administrator Costs must be addressed through the ongoing rulemaking process, as opposed to policy. It is unclear what connection is being made between SRIA pilot programs and the Benefit Cost Analysis process. However, the areas for improvement, as identified through the program evaluation, may include Benefit Cost Analysis.

NAC Recommendation 2016-07: FEMA should expand the available options for using unspent funds from the PAAP Program (overages from projects) to allow for more uses of unspent funds. Current options are limited to hazard mitigation activities that will reduce the risk of damage in future disasters and activities that improve future Public Assistance Program permanent work operations, such as training and planning for future disaster recovery operations.

FEMA Response 2016-07: FEMA disagrees with the recommendation. The law allows for excess funds to be used for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and other activities to improve future Public Assistance operations or planning (see 42 U.S.C. 5189f(e)(1)(D), Section 428 of the Stafford Act). FEMA feels that these two options for excess funds are consistent with the provisions authorized by law. FEMA does not have empirical evidence to indicate that

these options are unnecessarily limiting or what additional options should be made available within the authority provided. Enough of these projects have not undergone final reconciliation to provide such evidence.

V. FEMA Communications with State/Local/Tribal Officials

Issue: FEMA is doing an excellent job of arriving to disaster areas quickly. However, communication between FEMA and state/local/tribal officials continues to experience delays, creating confusion among local/state/tribal officials and the public.

NAC Recommendation 2016-08: FEMA should ensure state/local/tribal officials are promptly notified when any FEMA affiliated personnel arrive, prior to any field activity occurring. This includes notification about federal and contract personnel.

FEMA Response 2016-08: FEMA partially agrees with the recommendation. Prior to a disaster declaration, the FEMA Regional Office coordinates closely with the affected State about immediate needs and any initial response activities (i.e., Preliminary Damage Assessments and pre-positioning of resources). State/Tribal and FEMA officials work together to ensure local officials are promptly notified prior to and when any field activity is occurring in their jurisdiction. The State/Tribal Emergency Operations Center is the nexus of state, local, and federal communications.

When FEMA resources arrive to support the impacted area on scene, the appointed Federal Coordinating Officer or Federal Disaster Recovery Coordinator communicates directly with the State Coordinating Official and establishes a Unified Coordination Group (UCG) to establish joint objectives and an operational architecture. These federal and state/tribal personnel establish the joint objectives and operational architecture.

If needed and requested by the UCG, FEMA is also able to provide a wider geographic command structure, including Branch Directors and Division Supervisors directly on site in the affected communities. These FEMA personnel become the focal point for interaction with local officials and FEMA personnel working in the local area. This structure expedites and centralizes communications between FEMA and state, local, and tribal officials.

To address the issue raised in this recommendation, FEMA's field leadership will ensure that Branch Directors and Division Supervisors are the direct local/tribal link for all FEMA related activity.

VI. Personnel Local Awareness

Issue: Personnel responding to a disaster are often faced with a steep learning curve as they familiarize themselves with the affected state/local/tribal jurisdiction.

NAC Recommendation 2016-09: FEMA should develop a template to assist personnel responding to a disaster who travel to new jurisdictions, such as a guide for each state detailing laws, regulations, policies, and other considerations that may impact emergency management activities or new training opportunities.

FEMA Response 2016-09: FEMA fully agrees with the recommendation. FEMA regional offices have comprehensive profiles for all states in each region. They also have access to the State Preparedness Report (SPR) to better understand possible shortfalls. Regional Incident Management Assistance Teams and Federal Coordinating Officer cadre members should use these as references for deployments within their region. As the IMAT program builds a comprehensive training and exercise structure, review of SPR's and state profiles will be included.

VII. Policy Clarity During Damage Assessment Process

Issue: Confusion continues to exist during damage assessments over what costs are eligible for coverage. Unclear or contradictory statements by project leads can exacerbate this confusion.

Recommendation 2016-10: FEMA should seek mechanisms for improving communication clarity during the damage assessment process, including developing or increasing communication related training opportunities for project leads and just-in-time training for on-the-ground personnel.

FEMA Response 2016-10: FEMA fully agrees with the recommendation. Several FEMA initiatives improve the clarity and consistency of policy determinations. The new Public Assistance Policy Guide (Guide) published online on January 1, 2016 supersedes existing PA policy documents. The Guide includes simplified and clarified language to minimize multiple interpretations to increase consistent and efficient PA eligibility determinations. Checklists of information to document the response and recovery of the incident are also included. The online version is a searchable document with links to specific topics.

FEMA conducted a diagnosis of the PA Program and its processes. FEMA is implementing related findings through the development of revisited training materials based on an initial beta test of the new process model conducted during a recent disaster in Iowa. The implementation team will use the revised materials and work flow to train selected staff from the Regions and Reservist Cadre to be ready for a full beta test at a JFO.

As part of the new model, site inspectors will be responsible only for inspecting and documenting damage; nor for making eligibility determinations. However, all inspectors will be trained on basic eligibility criteria contained in the PA Guide. Staff responsible for making eligibility determinations and discussing those determinations with applicants will be required to take an advanced level of eligibility training. The new implementation model is designed to improve efficiency and reliability through the PA Program.

VIII. Recovery Training

Issue: Most training courses focus on either preparedness or response. A quick search of the Emergency Management Institute website yields few recovery based courses. However, recovery represents an area where many state, local, and tribal officials may spend time and energy.

NAC Recommendation 2016-11: FEMA should increase the number and availability of pre- and post-incident recovery related training courses, as increased training opportunities would help state/local/tribal officials successfully navigate the recovery process.

FEMA Response 2016-11: FEMA partially agrees with the recommendation. FEMA is committed to making recovery based training available to State, Local and Tribal emergency management partners. A link to the FEMA's National Training and Education Division Course Catalog is available on the public facing website <https://www.firstrespondertraining.gov>. The catalog features courses to help build skills that prepare first responders to prevent, respond to, mitigate, and recover effectively in mass consequence events.

A refined search of the catalog to include only results from FEMA Emergency Management Institute's course catalog in the mission area of recover(y) yields 278 available courses, 112 of which are accessible

online or through distance learning platforms. FEMA thinks this number represents an appropriate amount of recovery training.

VIII. Fatality Management Services

Issue: For four years in a row, the National Preparedness Report listed Fatality Management Services in the lowest third of States and territories self-assessment capabilities ratings. Fatality management varies by jurisdiction.

NAC Recommendation 2016-12: FEMA and the U.S. Department of Health and Human Services should cooperatively develop a Mass Fatality Management Concept of Operations and involve state/local/tribal representatives in the development process.

FEMA Response 2016-12: FEMA fully agrees with the recommendation. FEMA sits as a co-chair on the Mass Fatality Management Working Group that was founded by HHS and DoD. This Working Group coordinates the development of capabilities and the concept of operations needed for fatality management services. The Working Group is focused on the development of a Fatality Management CONOPS; the refinement of the Response FIOF's Fatality Management Services Annex, which details the federal mission objectives and critical tasks for fatality management; and the development of new capabilities and standards for federal fatality management resources.

IX. Tribal Government Participation in Emergency Management Preparedness Grant (EMPG) Program

Issue: Tribal government, with emphasis on those which span state boundaries, do not have consistent access to grant funds through the EMPG program.

NAC Recommendation 2016-13: FEMA should audit preparedness (non-disaster) grant programs to determine if there are barriers to participation for tribal governments and should support the inclusion of tribes as eligible grant program applicants when necessary.

FEMA Response 2016-13: FEMA disagrees with the recommendation, but agrees in principle. According to the Inspector General Act, independent audits of DHS components such as FEMA are the purview of the DHS Office of Inspector General. However, FEMA works closely with its tribal partners, and is aware of the primary barrier for tribal participation in the EMPG program.

The limiting factor in this case is existing statutory language that authorizes FEMA to make EMPG awards only to state and territorial governments. This effectively limits tribal participation to that of a sub-recipient of the various states and territories. The law provides the states and territories with the right to determine their own sub-recipients. FEMA cannot redirect the prioritization of sub-recipients chosen by the states and territories.

Some tribes are eligible to apply for and receive Tribal Homeland Security Grant Program (THSGP) funding directly from FEMA. However, due to additional statutory requirements that limit the eligible class of tribes under THSGP, FEMA typically receives THSGP applications from only about 10 percent of federally-recognized tribes each fiscal year. By its statutory design, the THSGP program is a competitive program that dictates funding must support terrorism-related capabilities. Congressional action is required to amend either of the statutes that authorize these programs.

X. Role/Responsibility of FEMA in Planning for and Responding to Cyber Attacks

Issue: Many stakeholders rely on electronic communication systems and information services to coordinate response before, during, and after a disaster event. A degraded technology mode (such as malicious activity or prolonged power outage) will likely impede an effective response, and deny the whole community access to vital services.

NAC Recommendation 2016-14: FEMA should review the National Response Framework and the National Protection, National Prevention, National Mitigation and National Disaster Recovery Frameworks to determine whether the roles and responsibilities of stakeholders in cybersecurity are clearly defined. The core capability targets for cybersecurity need to be modified based upon recent events.

FEMA Response 2016-14: FEMA partially agrees with the recommendation. In the National Preparedness Goal, Second Edition, published in October 2015, FEMA recognized the risk that malicious cyber incidents pose in every mission area. FEMA updated the definition of the Cybersecurity core capability to provide clarity. Through the THIRA technical assistance, FEMA works with participants to provide example targets for cybersecurity. The targets in the Goal are national examples and focused specifically on Protection.

However, FEMA disagrees with providing hazard-specific roles and responsibilities in the National Planning Frameworks. Clarity in the roles and responsibilities of stakeholders for responding to malicious cyber activities belongs in the 2016 revision of the National Cyber Incident Response Plan and a planned 2016 Comprehensive Preparedness Guide on planning for cyber incidents.

NAC Recommendation 2016-15: FEMA, through the states, should conduct a system wide gap analysis of the core capability of key stakeholders (i.e. local governments, first responders, hospitals, operators of critical infrastructure) to operate in a technology-degraded mode, both during the response to a disaster and during non-disaster periods.

FEMA Response 2016-15: FEMA fully agrees with the recommendation. FEMA's National Preparedness Assessment Division (NPAD) administers the State Preparedness Report (SPR), an annual self-assessment of state preparedness submitted by the 56 states and territories. To complete the SPR, states and territories assess their preparedness levels in each of the 31 core capabilities designated in the National Preparedness Goal, including Cybersecurity. In the 2014 SPR, only 13 percent of states and territories reported proficiency (defined by a 4 or 5 rating on a 5-point scale) in Cybersecurity, making it the lowest rated core capability for the third consecutive year. States and territories identified technical countermeasures, continuity of operations for cyber systems, and detecting malicious activity as their most common gaps, especially as they relate to training.

In addition to the information captured through the SPR, FEMA concurs with the intent of NAC recommendation 2016-15 to ensure state and local cyber capabilities are incorporated into operational planning and works closely with DHS's National Protection and Programs Directorate (NPPD) to understand those capabilities. NPPD is conducting the Nationwide Cybersecurity Review, which serves as a tool to measure progress in cyber security and drives initiatives and priorities according to the identified needs of the state, local, tribal, and territorial governments.