



Texas Conservative Coalition Research Institute

Senate Finance Committee

February 25, 2020

Regarding the Committee's Charge: Review federal, state, and local eligibility and receipt of disaster funds from Community Development Block Grants - Disaster Relief and the Federal Emergency Management Agency. Identify any barriers to the effective utilization of those funds and recommend any changes to statute, rule, or practice to promote the efficient deployment of those funds and expedite recovery by affected citizens, businesses, and communities.

I. Introduction

For all its strengths, Texas has the misfortune of being the site of many natural disasters. Since 1980, Texas has seen well over 100 disasters- including hurricanes, storms, floods, and tornadoes- causing at least \$1 billion each (in 2019 dollars), with a total estimated cost in the hundreds of billions.¹ Hurricane Harvey, which devastated the coast of Texas in 2017, cost an estimated \$130 billion alone- the second-most economically destructive hurricane in United States history.²

Over the last few decades, the federal government has played a pivotal role in assisting Texas and other states when natural disasters strike. While the state oversees the disaster response, the federal government provides critically-important supplemental funding. It does so primarily through three agencies: the Federal Emergency Management Agency (FEMA), an agency within the Department of Homeland Security, the Department of Housing and Urban Development (HUD), and the Small Business Administration (SBA).

FEMA provides a variety of assistance to disaster-stricken states, including the provision of emergency workers. More importantly, FEMA channels significant federal funds to state and local governments, with those funds falling into one of three general categories: assistance to state and local governments, assistance to households and individuals, and funds for mitigation efforts.

HUD's role in responding to a disaster does not involve the "front lines" presence to the extent that FEMA's can. Rather, HUD's key role is disbursing block grants that states use for a variety of recovery purposes. These community development block grants for disaster relief (CDBG-DR) offer states the advantage of flexibility; however, the length of time to actually disburse them to their recipients has drawn criticism in the wake of Hurricane Harvey recovery efforts.

This testimony offers several recommendations for how to better implement federal funds in Texas' recovery efforts. An important part of Texas' improvement of its disaster response efforts is working with the federal government to draw attention to federal regulations and practices in need of modification.

II. FEMA

FEMA's three main categories of aid are the Public Assistance program, the Assistance to Individuals and Households program, and the Hazard Mitigation Grant program. The purpose of FEMA's Public Assistance program is to "support communities' recovery from major disasters by providing them with grant assistance for debris removal, life-saving emergency protective measures, and restoring public infrastructure."³ State and local governments, as well as American Indian tribes and certain private nonprofit organizations, are eligible to apply for assistance under the program.⁴ Eligible projects are divided into "emergency work" and "permanent work." Emergency work consists of debris removal and emergency protective measure, whereas permanent work concerns the restoration of infrastructure such as buildings, utilities, roads, and bridges. Funds may be used to cover costs related to emergency work and permanent work, such as labor, equipment, supplies, and administrative costs.⁵

The Assistance to Individuals and Households program provides financial aid or direct services to people who have been seriously affected by a disaster. This funding (or services) may be used for a variety of purposes, including temporary housing, home repair, medical or funeral expenses attributable to a disaster, and moving and storage costs.⁶ Individuals are eligible to apply under the program. To qualify, they must be U.S. citizens, non-citizen nationals, or certain types of immigrants, have disaster-caused needs, and have insufficient insurance or other disaster aid to cover their needs.⁷

The Hazard Mitigation Grant program provides funding for disaster-stricken areas to improve infrastructure to lessen damage from future disasters. A key requirement for a grant under the program is a showing that the "savings" from the improvements exceed the cost of the improvements. FEMA claims that studies have shown that every one dollar so spent results in \$6 of savings.⁸ Examples of activities supported by the program include the elevation of houses to avoid future floodwaters, soil stabilization, aquifer storage and recovery methods, and enhancements to houses to make them more resistant to wind, fire, and floods.⁹ Individuals, businesses, and nonprofit organizations can apply for aid under the program through sub-applicants, such as local governments or state agencies. These sub-applicants then route their applications through official applicants (often states).¹⁰ Notably, FEMA bears only up to 75 percent of the cost for a mitigation project; individuals or state or local governments must pay the remaining cost, which can be done through cash or some types of donated services.

FEMA's authorizing statute, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the associated regulations, impose numerous requirements on applicants. A pivotal event in the process of obtaining aid from FEMA is a request by the governor of the affected state for the president to declare a natural disaster. Only the governor may request a presidential declaration for a state, and the declaration must be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."¹¹ Once this request is made, the president determines whether to declare a disaster, and if so, to what extent. The president may declare an emergency or make a declaration unique to fire disasters, but will typically declare a serious event a "major disaster." This last classification (if made by the president) effectively provides more funding to the affected area, and these funds can be used for a wider range of purposes.¹²

FEMA manages the Disaster Relief Fund (DRF), the federal government's primary source of funding its response to emergencies and disasters. FEMA's three primary programs are funded by the DRF. The DRF

receives annual appropriations, but presidential administrations can request supplemental appropriations in light of unanticipated events, such as major disasters.¹³ Supplemental appropriations in the wake of a serious disaster can exceed the baseline annual appropriations for a given year; for example, in the 2018 federal fiscal year, baseline appropriations were \$8.07 billion, and supplemental appropriations (largely due to a severe hurricane season) were \$43.10 billion.¹⁴ Funding is much less in most years; for example, baseline appropriations for the 2019 federal fiscal year were \$12.56 billion, and there were no supplemental appropriations.¹⁵

III. HUD

HUD administers the Community Development Block Grant (CDBG) program. This program aims to provide supplemental funding to state and local governments recovering from disaster. While Congress appropriates funds to HUD for this purpose, there is significant fluctuation from year to year in the appropriated amount. For example, the amounts appropriated in federal fiscal years 2017, 2018, and 2019 were \$7.8 billion, \$28 billion, and \$1.6 billion, respectively.¹⁶ This varying funding is due to the funding being purely supplemental and based on whatever disasters have recently occurred. HUD allocates funds to the states in accordance with a formula which takes into account an area's population, population growth, poverty, the age of its housing, and the extent of its overcrowded housing.¹⁷

HUD disburses these funds primarily to state governments but also to local governments. State and local governments in turn spend the funds or distribute them to sub-grantees. Grantees are required to design and implement disaster recovery programs, establish internal controls to monitor compliance, and provide technical assistance to sub-grantees.

To obtain a CDBG, an applicant must first determine the effects of the disaster and then develop an action plan to meet its most critical disaster-related needs which are not addressed by other resources, such as insurance or other federal aid.¹⁸ The first step involves assessing the damage the disaster has caused to the area's housing, infrastructure, and local economy. The action plan must state the activities which will best address the applicant's recovery needs. Each activity must be eligible, address a national objective, and address an effect of a presidentially-declared disaster. "Eligible activities" encompasses approximately 25 broad categories, including the acquisition of blighted property, rehabilitating or constructing buildings, construction of public facilities such as sewers, and provision of services related to topics as varied as drug abuse and employment.¹⁹ Importantly, eligible activities (perhaps counter-intuitively) include the use of funds to cover the non-federal share which an applicant must pay under the terms of a federal aid package. A "national objective" is one that aids in the prevention of slums or blight, benefits low and/or moderate-income people, or meets an urgent need. An activity that otherwise fails to qualify as an eligible activity may still be funded with CDBG-DR funds if HUD grants a waiver; however, certain federal requirements (e.g., nondiscrimination) cannot be waived.

The distribution of CDBG funds begins with the state's receipt of funds from the federal government. The state may then carry out activities directly using those funds (or hire contractors to do so), or disburse those funds to local governments. Since 2011, the General Land Office (GLO) has been charged with administering CDBG-DR funds allocated to Texas.²⁰

IV. Current Problems in the Delivery of Federal Aid for Disasters

FEMA faces numerous logistical challenges in disbursing aid to disaster-stricken states. In reviewing applications for aid, it must follow a process outlined in federal statutes and regulations which ensures that the federal government has a sense for the damage expected to arise from the disaster and the approximate cost of this damage. It must ascertain to the extent possible that disbursed funds will be put to effective use and address the state's most pressing needs in the wake of the disaster. Inspections of damaged property are often required. In addition, the funds disbursed to states are contingent on a variety of federal goals being pursued, which can include goals related to environmental protection, historical site preservation, and equal opportunity for women and minority-owned businesses. Moreover, FEMA must be vigilant against bad actors, such as unethical contractors, attempting to defraud the agency with illegitimate claims. Among other examples, a 2019 report by the federal Office of the Inspector General found that FEMA did not take adequate steps to prevent fraud and waste in disbursing transportation-related aid after several hurricanes in 2017.²¹ To exacerbate the pressure on FEMA, the agency follows these processes and pursues these goals in the context of disaster victims and their elected leaders publicly demanding immediate federal aid to address the devastating effects of disasters on communities.

Perhaps not surprisingly, FEMA has often been the target of extensive criticism regarding its response to significant disasters. For example, a report by the U.S. House of Representatives in the aftermath of Hurricane Katrina found that:

Our investigation revealed that Katrina was a national failure, an abdication of the most solemn obligation to provide for the common welfare. At every level – individual, corporate, philanthropic, and governmental – we failed to meet the challenge that was Katrina....In many respects, our report is a litany of mistakes, misjudgments, lapses, and absurdities all cascading together, blinding us to what was coming and hobbling any collective effort to respond.²²

Similarly, many people across the state of Texas have faced frustrating delays in receiving aid from FEMA in the aftermath of Hurricane Harvey. Earlier this year, U.S. Representative Brian Babin voiced his disappointment with FEMA's decision to delay disbursement of funds intended to replace elementary school buildings damaged by Hurricane Harvey in 2017.²³ The delay was caused by FEMA needing to ascertain that the building's repair costs exceeded 50 percent of the replacement cost. Rep. Babin pointed out that the high turnover in FEMA's staff resulted in dealing with the school district having to work with various people inside the agency, contributing to an inefficient process.

A February 2018 report by the Associated Press found that the response to Hurricane Harvey was even worse than that to Hurricane Katrina in some key respects. For example, FEMA did not begin placing families in need of temporary housing in trailers until 43 days after the storm, compared to 12 days with Hurricane Katrina.²⁴ Similarly, more than 40,000 families sought federal aid for short-term housing assistance in the wake of Harvey. More than 100 days after Harvey struck, however, the state had provided short-term housing to only 900 families.²⁵ Numerous reports indicate that many applicants for federal aid, particularly low-income applicants, gave up their efforts to obtain aid out of frustration.²⁶

A recent report by FEMA indicated that in the 2020 federal fiscal year- more than two years after Harvey- hundreds of millions of dollars were expected to be disbursed to Texas to assist recovery.²⁷ While the state

will benefit from the funds, such a long lag period indicates a lack of administrative efficiency. The agency has acknowledged that the slow pace of its actions is partially attributable to poor staffing decisions which have “historically over-committed to smaller disasters” at the expense of allocating resources to major disasters.²⁸ For example, when Hurricane Harvey struck Texas, almost half of the agency’s emergency workforce was unavailable or working on other disasters, even though Harvey was expected to be (and in fact was) a major disaster.²⁹ In addition to poor staffing allocations, FEMA’s bureaucratic review and its regulatory compliance demands result in remarkably high administrative costs. For example, as of January 31, 2020, the total obligations FEMA has incurred with respect to Hurricane Harvey total \$6.99 billion. More than \$1.83 billion of this amount- or 26.2 percent- is attributable to administrative costs.³⁰

HUD has faced similar criticism with respect to the CDBG-DR program in the wake of Hurricane Harvey. In February 2018, HUD allocated just over \$5.02 billion in CDBG-DR grants to Texas, and an additional \$652 million in August 2018, with more than \$4 billion of the grants to be used for mitigation projects.³¹ However, the allocation of funds does not by itself permit Texas to draw down the funds. Texas was forced to wait while HUD finalized the rules applicable to the grant funds. The federal agency’s action in this matter was so slow that it prompted public criticism by various Texas officials, including GLO Commissioner George P. Bush and Senators John Cornyn and Ted Cruz. Finally, HUD released the rules in August 2019.³² The state must now draft an action plan for the use of the grants that complies with HUD’s final rules, which is expected to take nine months (i.e., by about the end of May 2020). As part of the process, GLO had to hold hearings and solicit comments from the public.

V. Recommendations and Recent State-Level Improvements

The challenge for policymakers is how to maximize efficiency in the use of federal dollars for disaster aid. FEMA and HUD are prototypical bureaucracies and their recent response to Harvey indicates that the entire process of disbursing federal aid to states should be overhauled. As things stand now, people in need of aid must often navigate both federal and state bureaucracies before obtaining that aid.

A fundamental problem that Texas and other states face with respect to making the disaster recovery process more efficient is that the federal government provides so much of the relevant funding. This creates two problems. First, it means that Texas must persuade the federal government to alter the rules and practices which Texas views as in need of amending. Second, it can give states an incentive to effectively delegate disaster management to the federal government. As one expert quoted by the Cato Institute has said, it can be “good politics for state and local governments to neglect their own disaster response capabilities in order to make it easier to qualify for a presidential declaration.”³³

Make funds which FEMA disburses to states block grants. A good first step would be to amend federal law governing FEMA to transform the funding it provides to states into block grants. Doing so would lessen the need to comply with the federal bureaucracy. The former head of FEMA himself, Brock Long, advocated this reform in March 2018, saying “FEMA should be a block grant agency.”³⁴

Expand Waivers of Federal Conditions Attached to Aid. As HUD’s community development block grants illustrate, block grants alone will not solve problem of inefficiently disbursing aid. Making FEMA a block grant agency should be coupled with scaling back federal conditions attached to the grants. These conditions not only cause more paperwork and delays, but also embrace a “one size fits all” approach. For example, as the GLO pointed out in its post-Harvey report³⁵, HUD regulations require that 70 percent of HUD CDBG funding

go to low and moderate-income people (some types of FEMA aid are subject to the same requirement). However, the percentage determination is made in a way that penalizes low-income people who live in counties with a relatively high proportion of wealthier people.

Consolidate federal disaster-related operations into a single agency or sub-agency. The federal government should give serious consideration to consolidating all disaster-relief programs into a single agency or sub-agency. As matters stand now, HUD, FEMA, the Small Business Administration, and the Army Corp of Engineers all undertake disaster recovery efforts. This arrangement inevitably creates delays, additional paperwork, bureaucratic disputes, and duplication.

Revise the aid application process for individuals to require the submission of only one form. As the 2018 report by the Governor's Commission to Rebuild Texas noted, individual applicants for federal aid in the wake of a disaster must often submit multiple forms. This repeated submission of forms can cause frustration among applicants to the point they do not believe the application process to be a net benefit. As the report recommended, the state should work with the federal government to streamline the application process so an applicant may submit a single form through an automated intake system.

Maximize the amount of federal aid, perhaps by requiring counties across Texas to develop hazard mitigation plans. The state should work with the federal government to maximize federal aid. The current method of allocating funds to the state appears unfair to Texas. As the GLO notes, over 40 percent of disasters since 1980 which have caused at least \$1 billion in damages struck Texas, but over that period Texas has received less than 20 percent of federal community development block grants for disaster relief.³⁶ One step the state could take to increase federal funding is to ensure that its counties develop hazard mitigation plans. Post-Harvey, Texas received over \$1 billion through FEMA's Hazard Mitigation program. However, as one expert has pointed out:

[L]ess than half of Texas counties were eligible to receive HMGP [Hazard Mitigation grant program] funds because they failed to submit or renew their hazard mitigation plans, a requirement for such grants. Due in part to Texas's low participation rate, Texas cannot produce an Enhanced Hazard Mitigation Plan, reducing the state's eligibility for HMGP funding by 5%.³⁷

At the state level, policymakers enacted several important reforms during the 86th Session which implement lessons learned from Hurricane Harvey. While these reforms have not yet been tested, they should make Texas leaders confident that future disasters will be well handled.

House Bill 5 provides for a much-needed study into how the state can do a better job removing debris left behind after a disaster. The bill requires the Texas Division on Emergency Management (TDEM), in consultation with state agencies, to develop a catastrophic debris management plan and model guide for use by political subdivisions in the event of a disaster.

House Bill 6 requires TDEM to develop a disaster recovery task force to operate throughout the long-term recovery period following disasters by providing specialized assistance to address financial issues, available federal assistance programs, and recovery and resiliency planning to speed recovery efforts.

House Bill 7 requires the governor's office to compile and maintain a comprehensive list of regulatory statutes and rules that could require suspension during a disaster. TDEM is required to develop a plan to

assist political subdivisions of the state with executing contracts for services that are likely to become necessary following a disaster. The plan would be required to include training on the benefits to a political subdivision from executing disaster preparation contracts in advance of a disaster, recommendations on the services likely needed following a disaster (including debris management and infrastructure repair), and assistance with finding persons capable of providing disaster services and executing contracts in advance of a disaster.

Senate Bill 300 directs the GLO to enter into indefinite quantity contracts (IQCs) with vendors to provide information management services, construction services, engineering services, and other services GLO determines may be necessary to construct, or repair property damaged by a natural disaster. GLO is required to have these contracts (or their replacements) in force at all times. The goal is for the state to be able to act quickly when disasters strike, rather than trying to identify vendors, negotiate with them, and ensure their compliance with state and federal regulations immediately after a disaster. The GLO Commissioner has publicly stated that IQCs are a critically important reform.³⁸

Ultimately, the state must work with the federal government to improve the latter's response and flexibility during times of disaster. Disaster aid is similar to the production of low-income housing in one respect; because the federal government funds so much of it, the state is limited in what it can do unilaterally. In any case, the reforms made at the state level post-Harvey should ensure that Texas is better prepared for the next major disaster.

ENDNOTES

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