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DISASTER ASSISTANCE

Improvements Needed in Determining Eligibility for Public Assistance

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GAO/T-RCED-96-166

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide this statement for the record, which discusses our recent review of the Federal Emergency Management Agency's (FEMA) public assistance program. We plan to issue our final report on this work in May. Our statement today will focus on (1) FEMA's criteria for determining eligibility for public assistance, (2) the means by which FEMA ensures that public assistance funds are expended only for eligible items, and (3) changes in eligibility that could lower the costs of public assistance in the future.

In summary, we found the following:

- FEMA's criteria for determining the extent of permanent restoration for public facilities and for determining the eligibility of certain private nonprofit facilities are ambiguous. Also, FEMA has not systematically updated or disseminated to regional officials policy changes affecting eligibility. Clear and up-to-date criteria are needed because eligibility decisions effectively determine the level of federal spending for public assistance. Further, in large disasters FEMA often uses temporary personnel with limited training to help prepare and process damage survey reports, which are used in determining eligibility. Without clear and up-to-date criteria, inconsistent or inequitable eligibility determinations and time-consuming appeals may be more likely to occur.
- FEMA relies on states (the grantees for all public assistance grants) to ensure that expenditures are limited to eligible items. FEMA approves specific subgrantee projects (subgrantees are state and local government agencies, nonprofit organizations, and other recipients) before obligating funds, and also reviews project modifications and/or cost overruns. The states certify to FEMA at the completion of each subgrantee's project and the closeout of each disaster that all disbursements of public assistance grants have been in accordance with approved damage survey reports. Additional controls over disbursements include audits of some subgrantees by (1) independent auditors pursuant to the Single Audit Act of 1984[1] and (2) FEMA's Office of Inspector General, with possible augmentation by state audit agencies.
- Public assistance program officials in FEMA's 10 regional offices identified a variety of options that, if implemented, could reduce the costs of the public assistance program. Among the options recommended most strongly were placing limits on the appeals process; eliminating eligibility

[1]The Single Audit Act generally requires that entities receiving over $25,000 annually in federal grant funds have an independent audit.

for some facilities that generate revenue, lack required insurance, or are not delivering government services; and limiting the impact of building codes and standards applicable to permanent restoration. Implementing these options might require amending disaster assistance legislation and/or FEMA's regulations.

Background on the Public Assistance Program

When disasters such as floods, tornadoes, or earthquakes strike, state and local governments are called upon to help citizens cope. Assistance from FEMA may be provided if the President, at a state governor's request, declares that an emergency or disaster exists and that federal resources are required to supplement state and local resources. The 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 and following) authorizes the President to issue major disaster or emergency declarations and specifies the types of assistance the President may authorize. The assistance includes temporary housing and other benefits for individuals as well as public assistance.

The public assistance program funds the repair of eligible public facilities—such as roads, government buildings, utilities, and hospitals—that are damaged in natural disasters. Under the program, FEMA has obligated over $6.5 billion (in constant 1995 dollars) for disasters that occurred during fiscal years 1989 through 1994. FEMA may make public assistance grants to state and local governments and certain nonprofit organizations for three general purposes: debris removal, emergency protective measures,[2] and permanent restoration. Generally, the grants are to cover not less than 75 percent of the eligible costs.

Over the years, the Congress has increased eligibility for public assistance through legislation that expanded the categories of assistance and/or specified the persons or organizations eligible to receive the assistance. FEMA is responsible for developing regulations and guidance to implement the program.

Following a disaster declaration, FEMA helps survey damaged facilities and prepares damage survey reports (DSRs) that contain estimates of repair costs. Officials in FEMA's regional offices make the initial eligibility determinations. The applicants may appeal these decisions, first to the regional office and subsequently to FEMA headquarters.

[2]Emergency protective measures are activities undertaken to save lives and protect public health and safety; examples include search and rescue operations, security measures, and the demolition and removal of damaged structures.

Clearer Criteria Are Needed to Determine Eligibility

For disasters declared in fiscal years 1989 through 1994, FEMA projects that public assistance grants for permanent repairs and restorations will total over $5.2 billion. Decisions on eligibility effectively determine the level of federal spending for public assistance, affecting the amounts of grants and of FEMA's and applicants' administrative costs. The importance of clear criteria is heightened because in large disasters FEMA often uses temporary personnel with limited training to help prepare and process applications.

Criteria for Determining Extent of Permanent Restoration Are Unclear

Our review of FEMA regulations and implementing guidance, and discussions with FEMA officials responsible for making eligibility determinations, revealed a need for clarifying the criteria related to the standards (building codes) to which damaged facilities should be restored. Generally, FEMA's regulations provide that the agency will provide funding to restore an eligible facility on the basis of its design as it existed immediately before the disaster and in accordance with applicable standards. For a number of reasons, determining what standards are "applicable" can be contentious. For example, following the January 1994 Northridge (California) earthquake, a decision on assistance for restoring damaged hospitals was delayed for 2 years because of a dispute over which standards were applicable.

To be considered "applicable," the standards must—among other things—be in a formally adopted written ordinance of the jurisdiction in which the facility is located or be state or federal requirements. The standards do not necessarily have to be in effect at the time of the disaster; if new standards are adopted before FEMA has approved the DSR for the permanent restoration of a facility in the jurisdiction, the work done to meet these standards may be eligible for public assistance. FEMA regional officials cited a need to better define the authority for adopting and approving standards.

Criteria for Eligibility of Private Nonprofit Facilities Are Unclear

Similarly, the criteria for determining the eligibility of certain private nonprofit facilities are unclear. The Stafford Act provides that, in addition to specific types of private nonprofit facilities such as educational institutions and medical facilities, "other" private nonprofit facilities that "provide essential services of a governmental nature to the general public" may be eligible for assistance. When developing regulations to implement the legislation, FEMA relied on an accompanying report[3] to define the "other" category. The report's examples included museums, zoos,

[3]House Report No. 100-517.

community centers, libraries, shelters for the homeless, senior citizens' centers, rehabilitation facilities, and shelter workshops. FEMA's regulations incorporated the list of examples from the House report but recognized that other similar facilities could be included.

FEMA experienced problems in applying this regulation because, among other things, the wide range of services provided by state and local governments made it difficult to determine whether services were of a governmental nature. In 1993, FEMA amended its regulations to limit eligible "other" private nonprofit facilities to those specifically included in the House report and those facilities whose primary purpose is the provision of health and safety services. However, FEMA officials have still found it difficult to determine whether facilities are eligible. FEMA's Inspector General has cited examples of private nonprofits that do not appear to provide essential government services yet received public assistance funding. For example, following the Northridge earthquake, a small performing arts theater received about $1.5 million to repair earthquake damage because it offered discount tickets to senior citizens and provided acting workshops for youth and seniors.

Clear Criteria Are Important for Controlling Costs and Other Reasons

Clear criteria are important for controlling federal costs and helping to ensure consistent and equitable eligibility determinations. For example, depending on which set of standards—which determine the scope of work needed for permanent restoration—were deemed "applicable," FEMA's costs of restoring one of the hospitals damaged in the Northridge earthquake ranged from $3.9 million to $64 million. (The latter estimate is based on the cost of demolishing and replacing the hospital.)

Additionally, without clear criteria, inconsistent or inequitable eligibility determinations and time-consuming appeals by grantees and subgrantees may be more likely to occur. According to FEMA officials, between fiscal year 1990 and the end of fiscal year 1995, there were 882 first-level appeals of public assistance eligibility determinations. FEMA headquarters had begun logging in second- and third-level appeals in January 1993 and could not quantify the number of such appeals that occurred before then; but from January 1993 to the end of March 1996, there have been 104 second-level appeals and 30 third-level appeals. Although FEMA may always expect some appeals, clearer guidance on applying eligibility criteria could help reduce their number.

The need for clearer, more definitive criteria dealing with the eligibility for public assistance takes on added importance because of FEMA's use of temporary personnel with limited training to help prepare and process DSRs, which are used in determining the scope of work eligible for funding. The number of large disasters during the 1990s has resulted in a great number of DSRs; for example, over 17,000 after the Northridge earthquake and over 48,000 after the 1993 Midwest floods. FEMA regional officials working on the recovery from the Northridge earthquake pointed out that the lack of training directly results in poor quality DSRs that may cause overpayments or underpayments to public assistance recipients.

Officials Recognize Need for Clearer Criteria Systematically Disseminated

According to FEMA regional officials, decisions made in determining eligibility following one disaster have not been systematically codified or disseminated to FEMA personnel to serve as a precedent in subsequent disasters. The regulations were intended to be supplemented with guidance, examples, and training to clarify eligibility criteria and help ensure their consistent application, but because of competing workload, this did not occur as envisioned. FEMA's written guidance supplementing the regulations include a manual published in draft in 1992 and policy memorandums.

FEMA and other officials recognize the need to clarify the criteria and improve policy dissemination. At a January 1996 hearing,[4] the Director of FEMA noted that in previous disasters FEMA staff worked without having policies in place that addressed public assistance, making eligibility determinations difficult. FEMA plans to republish and subsequently update the public assistance manual and has begun offering a new training course for officials who prepare DSRs.

Also, FEMA has recently taken steps to improve policy dissemination. Examples include (1) a compendium of policy material compiled by one FEMA regional office, which FEMA headquarters is circulating to the other regions; (2) the development of a new system of disseminating policy memorandums, including a standardized format and numbering system; and (3) the dissemination—by headquarters to all regional offices—of the results of second- and third-level appeals.

[4]Hearings before the Subcommittee on Government Management, Information, and Oversight, House Committee on Government Reform and Oversight, Northridge, California, Jan. 19, 1996.

FEMA Relies Largely on States to Ensure Eligibility of Expenditures

To ensure that expenditures are limited to eligible items, FEMA relies largely on states' (grantees') certifications. Further limited assurance is provided by audits.

States Certify That Disbursements Are Appropriate

When FEMA approves a DSR, it obligates an amount equal to the estimated federal share of the project's cost. The obligation makes these funds available to the state to draw upon as needed by the subgrantees. If a subgrantee wishes to modify a project after a DSR is approved, or experiences cost overruns, it must apply through the state to FEMA for an amended or new DSR. This gives FEMA the opportunity to review supporting documentation justifying the modification and/or cost overrun.

In accordance with a governmentwide effort launched in 1988 to simplify federal grant administration, FEMA relies on states—in their role as grantees—to ensure that expenditures are limited to eligible items. The states are responsible for disbursements to subgrantees and certify at the completion of each subgrantee's project and the closeout of each disaster that all disbursements have been proper and eligible under the approved DSRs. FEMA does not specify what actions the states should take to enable them to make the certifications, but provides that inspections and audits can be used. FEMA has no reporting requirements for subgrantees but expects grantees to impose reporting requirements on subgrantees so that the grantees can submit necessary reports.

Most disasters stay open for several years before reaching the closeout stage. FEMA officials involved in the closeout process in the San Francisco, Atlanta, and Boston regions told us that they review the states' closeout paperwork to verify the accuracy of the reported costs, but they rely on the states to ensure the eligibility of costs.

Audits Provide Some Additional Assurance

Independent audits serve as a further check on the eligibility of items funded by public assistance grants, although the audit coverage is somewhat limited. FEMA's Office of Inspector General (OIG) audits recipients on a selective basis and attempts to audit any disaster when asked to by a FEMA regional office. Officials in the OIG's Eastern District Office could not estimate their audit coverage but said that a significant percentage of the dollars were audited by focusing on where the large sums of money went. For example, although the officials had looked at

only about 20 of the several hundred public assistance subgrantees for Hurricane Hugo, they believed that those subgrantees represented about $200 million of the $240 million in public assistance costs. Officials in the Western District Office said that less than 10 percent of the disasters receive some sort of audit coverage by the OIG. Overall, they believe that probably less than one percent of DSRs are covered.

States may also perform audits of specific subgrantees. Currently, California is the only state that has an arrangement with FEMA's OIG to perform audits that meet generally accepted auditing standards. (Audit coverage in California is particularly important because in recent years California has received far more public assistance funds than any other state.) OIG officials said that they have attempted to negotiate for similar audit coverage by other states, but none have agreed to provide it, generally citing the difficulty of hiring and paying for the audit staff and keeping a sustained audit effort under way in light of the sporadic nature of FEMA's disaster assistance.

FEMA may obtain additional assurances about the use of its funds from audits of subgrantees conducted as part of the "single audit" process.[5] State and local governments and nonprofit organizations that receive $100,000 or more of federal funds in a year must have a "single audit"[6] that includes an audit of their financial statements and additional testing of their federal programs. Auditors conducting single audits must test the internal controls and compliance with laws and regulations for programs that meet specified dollar criteria. The largest programs, in terms of expenditures, are therefore tested. Entities that receive $25,000 to $100,000 in federal assistance in a year have the option of having a single audit or an audit in accordance with the requirements of each program that they administer.

[5]State and local governments are subject to the Single Audit Act of 1984 and its implementing guidance, OMB Circular A-128, "Audits of State and Local Governments." Nonprofit entities are administratively subject to the single audit process under OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

[6]Nonprofit organizations that operate only one federal program may elect to have an audit of that program.

Changes to Eligibility Criteria Cited by Disaster Management Officials

Because the public assistance officials in FEMA's 10 regional offices are involved in the day-to-day operations of the public assistance program, giving them a high degree of expertise, we obtained their recommendations for reducing the costs of future public assistance. We also asked the officials to identify potential obstacles to implementing those recommendations. We asked the National Emergency Management Association, which represents state emergency management officials, to respond to the options that the FEMA officials generated because implementing many of the options would affect the states. Because the available records did not permit quantifying the impact of each option on past public assistance expenditures, and because future costs will be driven in part by the number and scope of declared disasters, the impact on the public assistance costs of future disasters is uncertain.

Options that (1) the FEMA regional officials strongly recommended and (2) the National Emergency Management Association endorsed for further consideration are:

- Better define which local authorities govern the standards applicable to the permanent restoration of damaged facilities.
- Limit the time period following a disaster during which those authorities can establish new standards applicable to the restoration.
- Eliminate the eligibility of facilities that are owned by redevelopment agencies and are awaiting investment by a public-private partnership.
- Restrict the eligibility of public facilities to those being actively used for public purposes at the time of the disaster.
- Reduce the number of times that recipients may appeal a FEMA decision on eligibility of work.
- Improve insurance requirements by (1) eliminating states' current authority to waive mandatory purchase of property insurance otherwise required as a condition of FEMA's financial assistance and (2) requiring applicants to obtain at least partial insurance, if it is reasonably available.

Additional options strongly recommended by the FEMA officials but not specifically endorsed for further consideration by the National Emergency Management Association include the following:

- Limit funding for facilities used to temporarily relocate subgrantees during appeals, because the appeals process can take several years. This option would be comparable to the insurance industry's practice of calculating maximum allowable temporary relocation costs.

- Eliminate the eligibility of revenue-generating private nonprofit organizations.
- Eliminate funding from FEMA for some water control projects.
- Limit funding for permanent restoration to the eligible cost of upgrading only the parts of structures damaged by the disaster. (Applicants would bear the expense of upgrading undamaged parts of the structures.)
- Eliminate the eligibility of publicly owned facilities that are being rented out to generate income. For example, facilities owned by local governments and rented to the private sector for use as warehouses, restaurants, stadiums, etc., would not be eligible.
- Eliminate or reduce the eligibility of facilities when the lack of reasonable pre-disaster maintenance contributes to the scope of the damage from a disaster.
- Eliminate the eligibility of the credit toward the local share of the costs of public assistance for volunteer labor and donated equipment and material.
- Increase the percentage of damage required for FEMA to replace a structure (rather than repair it) to a threshold higher than the current 50 percent.

The National Emergency Management Association proposed that considerable savings in the federal costs of public assistance could be realized by reducing the federal administrative structures. The association also endorsed for further consideration the following options, identified but not most strongly recommended by FEMA respondents:

- Eliminate the eligibility of postdisaster "beach renourishment," such as pumping sand from the ocean to reinforce the beach.
- Limit the scope of emergency work to the legislative intent. (The association believes that assistance for debris removal and emergency protective measures has been used for permanent repairs.)
- Eliminate the eligibility of revenue-producing recreational facilities, e.g., golf courses and swimming pools.

Conclusions

Clearer and more comprehensive criteria (supplemented with specific examples) that are systematically disseminated could help ensure that eligibility determinations are consistent and equitable and could help control the costs of future public assistance. To the extent that the criteria are more restrictive, the costs of public assistance in the future could be less than they would otherwise be. In the 1990s, the potential adverse effects of a lack of clear criteria have become more significant because of (1) an increase in large, severe disasters and (2) the need to use temporary

employees with limited training in the process of inspecting damage and preparing damage survey reports.

A number of FEMA public assistance officials' recommendations are consistent with options proposed by FEMA's Inspector General, with our work,[7] and with our current review. Furthermore, the options highlight a number of instances in which existing eligibility criteria need to be clarified or strengthened with additional guidance. Our May report contains recommendations designed to clarify and help ensure consistent application of the criteria and to identify changes that should be implemented.

[7]For example, Earthquake Recovery: Staffing and Other Improvements Following the Loma Prieta Earthquake (GAO/RCED-92-141, July 30, 1992) and Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding (GAO/RCED-94-193, June 17, 1994).

Related GAO Products

Natural Disaster Insurance: Federal Government's Interests Insufficiently Protected Given Its Potential Financial Exposure (GAO/T-GGD-96-41, Dec. 5, 1995).

Disaster Assistance: Information on Declarations for Urban and Rural Areas (GAO/RCED-95-242, Sept. 14, 1995).

Disaster Assistance: Information on Expenditures and Proposals to Improve Effectiveness and Reduce Future Costs (GAO/T-95-140, Mar. 16, 1995).

GAO Work on Disaster Assistance (GAO/RCED-94-293R, Aug. 31, 1994).

Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding (GAO/RCED-94-193, June 17, 1994).

Earthquake Recovery: Staffing and Other Improvements Made Following Loma Prieta Earthquake (GAO/RCED-92-141, July 30, 1992).

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