Establishing a Deductible for FEMA’s Public Assistance Program

Docket ID FEMA-2016-0003

Association of State Floodplain Managers Comments in Support of the Deductible

Summary of ASFPM comments:

The number of federally-declared disasters has gone up dramatically over the past decades, from an average of 13 per year in 1950 to an average of 141 recently. Even more dramatic, the percentage of the disaster costs picked up by the federal taxpayers has increased from just 20 percent to more than 75 percent. No one knows for sure how much flood disasters alone cost the nation, but some viable estimates run from $20 billion/year to maybe five times that amount.

ASFPM has long been concerned that the nation’s disaster relief program is not used to effectively to build state capability, but instead has created an atmosphere where states are taking fewer steps and investments to mitigate existing hazards or prevent creating new hazards because they believe federal taxpayers will pay for most of the disaster costs when disaster strikes. This does not need to be the case. This proposal for a Public Assistance (PA) disaster deductible for states is an important first step to reverse this trend. It will provide some reward for states, tribes and territories to mitigate and prevent creating future disasters and for them to build capability to handle future disasters. In fact, we believe this is one of the most important proposed policy adjustments in disaster programs since the 1993 adjustments to the Hazard Mitigation Grant Program.

Too many states have come to believe natural disasters are the problem of the federal government, when actually, public safety is the primary responsibility of state and local governments that have authority to guide development to be at more or less at risk to natural hazards. States must provide local governments with the authority, technical assistance and support to become resilient. Too many small disasters are being declared federal disasters and too much of the cost is being picked up by federal taxpayers. Solving this problem is difficult enough, but solving it in a way that equitably shares the cost of disasters among all levels of government and property owners is a special challenge. The concept of the proposed disaster deductible is a positive step in this direction.

ASFPM supports the long-term goal to have more resilient communities. While we realize the threshold for declaring a disaster has not kept pace with inflation, it may be better to use a different approach to the issue in order to foster more mitigation/resilience than to unilaterally raise the threshold. We do know the current system of disaster relief tends to reward states that do the least to prevent future disasters with higher cost shares, since those states tend to have high risk and experience catastrophic disasters, often because little has been done to guide development away from those high risk areas. The disaster deductible is an option with significant potential to incentivize mitigation and build state capability. A deductible should identify and reward recipients that take steps to make themselves more resilient, mitigate disasters and/or build capacity.
ASFPM wishes to point out a current problem with PA that is not in line with this incentive/reward concept. Currently, communities are eligible for PA and other federal dollars even if they do not belong to the NFIP. That is wrong and this rule provides an opportunity to correct that. No floodprone community should be eligible for any category of PA for any kind of disaster unless they are in good standing in the NFIP.

Many states will claim poverty, and data will likely show the states that speak loudest are likely the ones that have claimed the most federal taxpayer funds for disasters in the past. Somehow this system must be set up in a way that builds capacity in those states.

We should also point out that states that do more to prevent future disaster costs may also find themselves with less federal assistance for mitigation since they will be ineligible for Individual Assistance, PA and HMGP. How to address this issue should be considered during the process of developing the rule.

Our responses to the questions asked in the Advanced Notice of Proposed Rulemaking are below:

1. Calculating the deductible—how should FEMA do this?
Calculating the deductible using the PA per capita indicator does not measure the effort the state is putting into its actions to reduce future disaster costs, nor do metrics like population. In our January 11, 2016 comments on Individual Assistance Declaration Criteria for States, ASFPM supported using the Total Taxable Resources as a basis to evaluate the state’s fiscal capacity versus the state’s current fiscal policy, which would influence actual revenue, budget surplus/deficit, bond ratings, unemployment rate, etc.). Conceptually we believe the same approach should be used for PA as well. Providing federal taxpayer funds to a state unwilling to mitigate and plan for disasters or build up funds for the next disaster simply rewards bad behavior. For example, take a state that makes a fiscal policy decision to cut income taxes. While its TTR has not decreased, its possible budget surplus, revenue and even state staffing/capability in important programs such as hazard mitigation or floodplain management is cut. Such a state should not have a deductible reduced due to its own short-term policies. This system must be set up to reward good behavior and decision making by states, and incentivize other states to do the same.

In terms of calculating the deductible, we do not advocate using the measurement of disaster risk as each state’s risk profile is different and ever changing (and the risk can become even higher if the state allows more development in high risk areas) making such a calculation difficult if not impossible. Rather, the concept of reduced disaster risk should be applied in terms of the applicability of the deductible.

2. Scope of, or applicability of the deductible
The deductible should only be applied to the recipient state, tribal or territorial government disaster applicants and should apply to all PA costs. The deductible should not be passed onto the community level, and by the same token, actions by subrecipients (communities) should not count toward the state deductible (except for that portion of direct funding from the state for those actions). For example, community actions under CRS would not be counted, but the CRS also provides credit for state standards that exceed NFIP minimums, so
those statewide standards could be considered as actions that reduce the deductible if they reduce the federal taxpayer exposure for disaster costs.

Worth considering is a simple process for the deductible, such as put forth by the state of Colorado that would apply different cost shares based on a state meeting or not meeting the deductible. Concerns with that approach come into play if the cost share can be subjectively altered, thus opening the process to non-uniformity and inconsistency.

3. **Satisfying the deductible**

The intended outcome of the proposal is to make meaningful improvements in mitigating risk to existing development and public infrastructure, as well as preventing added development and infrastructure that will expose federal taxpayer to added disaster funding in the future.

As such, only actions by the recipient that actually reduce future federal taxpayer costs should be counted toward the deductible. These will almost always be hazard mitigation actions, although there could be some planning actions that would qualify as well. Response actions tend to reduce loss of life, but do not reduce future exposure of taxpayer funding for disaster relief, especially for PA. So while some states have their own, self-funded PA- and IA-type programs that kick in when a federal disaster is not declared, these types of programs should not be credited if they really do not reduce future federal taxpayer costs. However if a state provides matching funds for hazard mitigation or has its own hazard mitigation grant program using actual state funds, these should be counted.

Land use and building codes are some of the most effective tools for reducing future disaster costs, but those program standards must be applied statewide. The type of mitigation action matters. Some mitigation actions like buyouts and open space restrictions are a “one and done” for the federal taxpayer that will never again pay disaster costs for that property. Other actions like elevation, levees, etc. still have residual risk and retain exposure to federal taxpayers. So if credited, the credit should be partial. State actions to identify hazards using state-funded flood mapping, landslides, dam failure zones, etc. should get credit. States that map or regulate based on future conditions like sea level rise, watershed development, manage residual risk areas, avoid the 500-year flood area for critical facilities and the like, save future disaster costs and need some credit.

Furthermore, we suggest a sliding scale approach for state actions. For example, a fully adopted, implemented and enforced statewide building code should get a certain amount of points or dollar credits: scaled at 50 percent for adoption, another 25 percent for implementation and finally another 25 percent if the code is being enforced adequately statewide (the Building Code Effectiveness Grading Schedule rating could be used for this factor). For state floodplain management programs, a minimum number of points or dollar credits would be provided for states that only provide matching funds for their CAP-SSSE grant (to coordinate the NFIP) and more if state funds support staffing beyond that. A higher amount of points or dollar credits would be provided for states that have adopted their own higher state development standards and/or conducts state permitting, passing state laws such as mandating that permits issued by local floodplain managers must be done by certified floodplain managers or requiring them to obtain continuing education credits. Also credit is appropriate for states undertaking flood mapping activities, or have a state program that adheres to ASFPM’s
Effective State Programs principles. State programs or policies investing in conservation restoration, protecting natural functions of floodplains, and green infrastructure not only reduce risk and disaster costs, but also enhance natural floodplain functions. For example, the state of Minnesota recently passed a statewide stream buffer mapping and protection program.

For state hazard mitigation programs – states with an enhanced mitigation plan, by definition, are undertaking more state mitigation activities and/or more points or dollar credits could be given to states that have their hazard mitigation programs that are EMAP certified. For mitigation projects, only state contributions toward the project like HMGP should be counted, not local contributions. An example is a state fund that cost shares mitigation projects with communities, credit the amount from the state fund. Additionally, actual mitigation actions must get more points than plans, such as statewide hazard mitigation plans, which are already required to get disaster assistance.

This concept could also apply toward other programs like dam safety program or any other state program that exists due to a high risk hazard that could result in a federal disaster declaration. Still, it is important for these programs to be effectively administered and enforced statewide.

FEMA should leverage other rating systems whenever possible to verify state actions and minimize the administrative burden. Previously mentioned systems such as EMAP, enhanced state mitigation plan certification, CRS Uniform State Credits and BCEGS statewide value should be used as each of those systems/programs tend to have a rigorous verification mechanism. This would, in turn, reduce the administrative effort FEMA and the state would have to undertake during subsequent reverification of the deductible credit.

All actions could be counted either on a point system of dollar system, which FEMA will have to develop, pilot test and discuss with all states in order to ensure equity. Eventually all such actions will have to translate to dollars if that is how the deductible is defined. The issue of crediting state reserve funds will have to be reviewed carefully. Some states only use reserve funds for the 25 percent non-federal share of grants for state agencies. Also some states that have short memories regarding disasters are using disaster reserve funds for other purposes when budgets get tight. If reserve funds are credited, there has to be a level of commitment and dedicated funding source to avoid the political pitfalls. It will be essential for states to track the actions that count toward the deductible and for FEMA to do periodic audits to verify them. Furthermore, if the state is credited for something like a mitigation fund that is subsequently revoked, FEMA must be reimbursed for any incorrect credit.

4. Incentivizing change

We believe the proposed deductible will incentivize states to adopt and implement effective programs and measures that will save future federal taxpayer funding for disasters. Especially important will be for states to build their capability for disasters. While we think it important for states to have capacity in all aspects of emergency management, it does not seem logical to count some EM programs toward the deductible if those actions will not reduce future federal taxpayer funds for disasters. If credit is provided for some of those
actions, like response, we suggest it be less than full credit, which should be provided for actions that will only slightly mitigate existing or future risk or federal taxpayer costs.

In some states the programs that can either reduce or increase the impacts of flooding are located in many different agencies, which is OK. Examples are building codes, transportation standards for bridges, culverts and roads, dam and levee safety programs, landslide and mudslide programs, resource protection programs, etc. All agencies are under the jurisdiction of the Legislature and the governor, so all agency programs can be brought to bear if the state leaders have the willingness and foresight to do so.

5. Implementation Considerations

ASFPM has previously commented as to the specific actions that a recipient may take, actions that might be incentivized. Simply put, they should be actions that reduce future federal taxpayer disaster costs. Recipients should have sufficient opportunities to adjust the deductible.

From an implementation standpoint, it will be important to test and pilot the concept before implementation. By doing rigorous testing and pilots, FEMA can build capacity for recipients to adjust to the new deductible as they will be quite aware of the changes that are coming. After testing and before implementation, states should be given at least four years to implement as many states are on a biennial budget and implementation of any state investment in deductible satisfying activities may be delayed as long as two years. In some cases, the state would have two years to implement the actions.

As we have said before, there are no circumstances we can envision where the deductible should be passed on to the subrecipient. The easiest way to ensure this happens is to only credit activities only a state accomplishes. Similarly, FEMA should not waive the deductible for any state. But if FEMA does go this route, very clear criteria must be developed and that criteria should be transparent and objective so everyone knows the rules up front and it’s not subject to political manipulation.

There are two considerations for annual or continuous consideration. One is for the deductible—for when a state may have more than one declared disaster per year, the other is whether an action given credit should be credited one time or be continuously credited. FEMA should apply the deductible for each disaster. States not typically proactive will need this incentive.

Whether an action would be credited only once or continuously each year needs to be discussed with all states to ensure it can be implemented uniformly and equitably and updated regularly. In general, programs that are adequately applied and enforced statewide provide continuous benefits to federal taxpayers. But whether projects are one time or continuous needs clear definition and broad discussion. Programs tend to have recurring benefits, whereas projects may only count once.

6. Estimating impacts:

It is important to acknowledge the status quo has a negative economic impact on all taxpayers in terms of paying for disaster assistance. The questions as to whether a recipient maintains rainy day funds are a function of the state’s fiscal policies and not capability. So while there will certainly be some costs to states as they
undertake activities to help reduce the deductible, that must be viewed in the context of future disaster assistance and losses avoided. Impacts on small nonprofits and government jurisdictions will be nonexistent as long as the program very strongly commits to only crediting state level actions and not allowing states to roll the responsibilities down to the local level.