



July 2, 2025

The Honorable Sam Graves
Committee on Transportation and
Infrastructure
United States House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Larsen
Committee on Transportation and
Infrastructure
United States House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Graves and Ranking Member Larsen:

Thank you for the opportunity to comment on the discussion draft of the Fixing Emergency Management for Americans (FEMA) Act of 2025 (FEMA Act or discussion draft). We strongly support the goals of the discussion draft and think it would provide a helpful streamlining of the process for claiming public assistance in the wake of major natural disaster. Our comments primarily focus on section 101 of the discussion draft, and more specifically on the creation of the proposed addition of a new section 409 to the Stafford Act (proposed section 409).

The bulk of our comments seek what we believe are clarifications consistent with the discussion draft's underlying goals. We also suggest expanding the proposed section 409 to include emergency work and services. On the latter, the comments below provide several examples of utilities waiting months and years after emergency work had been completed to receive FEMA funding. Generally, these delays are not because there is any doubt whether the expenses were necessary or reasonable, but because they failed to meet some aspect of federal procurement requirements. While it may seem nonsensical to submit an estimate for costs that have already occurred, the streamlined estimation process of proposed section 409 could avoid such needless delays and reduce administrative costs for utilities and FEMA.

Overview

APPA strongly supports the discussion draft's move from the cost-based reimbursement model provided under Stafford Act section 406 to an estimate-based method provided under proposed section 409 as created by section 101(a). Arguably one of the most common disputes with FEMA over public assistance reimbursement stems not from whether expenses were reasonable or accomplished the intended goal, but from disputes over procurement methods. In fact, it has been the position of the Department of Homeland Security that FEMA should seek reimbursement (or the "de-obligation") of funds that were reasonably spent, and which accomplished the purpose of the grant but technically violated federal procurement requirements.¹

As noted in the committee's section-by-section description of the discussion draft, grants under this

¹ Department of Homeland Security, Office of Inspector General "FEMA Can Do More to Improve FEMA Can Do More to Improve Public Assistance Grantees' and Subgrantees' Compliance with Federal Procurement Rules" (OIG-16-126-D), Sept. 2, 2016, at 10.

new system would be “provided on a per-project basis, without regard to prior condition, based on an estimated cost developed by an appropriately licensed professional.”² In turn, these funds could be used to “repair, restore, reconstruct, or replace public or private nonprofit facilities damaged or destroyed by a major disaster, including incorporating mitigation measures.”³

As we understand the discussion draft’s intent, we believe proposed section 409 is intended to clarify, simplify, and reduce regulatory risk from the process of receiving public assistance. In turn, however, we believe it is intended that public assistance grant recipients would accept some of the project cost risk. Currently, every expense that can be justified is covered. Under the proposed section 409, if actual expenses were greater than the estimate upon which the grant was based, it would be the recipient, not FEMA responsible for making up the difference. This is a tradeoff our members think is reasonable.

Discussion Draft Section 13

Electric power utility services are critical to life safety and the protection of property. They are also critical for disaster response and restoration. Section 13(a)(9)(C) of the discussion draft lists the response responsibilities of a comprehensive emergency management system. This list includes “restoring critical public services,” which could be read to include utilities, but clarification would be helpful. Likewise, section 13(a)(11) lists as one of FEMA’s roles “helping to ensure the effectiveness of emergency response providers in responding to all hazards, including natural or man-made.” Again, given the central role of electric utility services in response and recovery, it would be helpful to reflect that here also.

Recommendation:

- In section 13(a)(9)(C), insert after “critical” the phrase “utility and other.”
- In section 13(a)(11), insert after “response” the phrase “and utility.”

Discussion Draft Section 101

Proposed Section 409(a)(1)(A)

Proposed section 409(a)(1)(A) provides that the President may make grants to “a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster.”

Use of Grant Funds

As written, proposed section 409(a)(1)(A) would appear to limit grant use to repairing the public facility for which a cost estimate for repair is submitted. However, proposed section 409(b)(1) provides that such grants can be used to “repair, restore, reconstruct, or replace” the damaged public facilities for which the grant was provided, but can also be used for work on other selected public facilities, to construct new facilities, can be combined with other similar grants to construct a consolidated facility, or can fund hazard mitigation measures.

² Committee on Transportation & Infrastructure, “Discussion Draft – Fixing Emergency Management for Americans (FEMA) Act of 2025, Bipartisan Section-by-Section” (May 8, 2025), at 2.

³ Id.

Recommendation:

- Strike “for the repair, restoration, reconstruction, or replacement of;” and insert “owns or operates.”

Requesting Entity

It is unclear whether one or more entities may make a request for a grant for a specific public facility or who would take precedent if multiple requests for the same facility are submitted. As drafted, it appears that under proposed section 409(a)(1), a state, county, city, and utility could all include an estimate to repair the same public facility in a public assistance request. While the language of proposed section 409(a)(1) is the same as is provided by Stafford Act section 406, the flexibility of proposed section 409 may create incentives that Stafford Act section 406 does not.

Specifically, in some respects it does not matter who makes the request under Stafford Act section 406. The request is for costs incurred for a specific project and must be used for that specific project. However, under proposed section 409 an estimate could be submitted for the cost to repair one public facility, but the funds instead used elsewhere, for example to repair another facility, build an entirely new facility, or fund some other hazard mitigation project. Thus, one can see a situation where a state or county and locality submit an estimate of the cost to repair a particular public facility but disagree as to how those funds should be used.

Recommendation:

- The discussion draft should be amended to clarify that preference in a request should be given to the jurisdiction with the most direct authority over a public facility for which an estimate was submitted.

Proposed Section 409(b)

Subsection (b) creates two separate sets of criteria:

- One set of criteria for using grant funds; and
- One set of criteria for providing an estimation of the cost to “repair, restore, reconstruct, or replace” (hereafter referred to in shorthand as repair) a public facility damaged in a major disaster.

As we read the bill, an entity submits an estimate for repair of a damaged public facility following the criteria established in proposed section 409(b)(2). If approved, the entity then receives a grant based on that estimate.

The entity then must meet the criteria for use of those funds as listed under proposed section 409(b)(1). Post-award oversight would require annual progress reports that list the projects to be funded by the grant and the status of those projects. Nothing in the proposed section indicates FEMA can otherwise oversee or audit – and potentially de-obligate funds – based upon the manner in which the funds are spent, including for example, for a failure to follow federal procurement requirements.

Nonetheless, some commentators believe that where funds are not to be used to repair the facility in question, then the applicant must submit a cost estimate for the ultimate use of the funds instead of, or in addition to, the cost estimate to repair the facility damaged in the major disaster. Additionally, some commentators believe that FEMA could still impose requirements similar to those that currently

apply to section 406 grants – such as adherence to federal procurement requirements – for projects funded by a proposed section 409 grant. Clarifying these points would be helpful in ensuring FEMA interprets Congress’s intent correctly and so stakeholders have an aligned understanding of the discussion draft’s mechanics.

Cost Estimates and Building Codes

Estimates are based on the cost of repairing a public facility “to applicable building codes as of the time of repair.” Proposed section 409(b)(11)(A) further defines applicable building codes to include “relevant consensus-based codes, specifications, and standards, including amendments made by State, local, or Indian tribal, or territorial governments.” Such codes generally do not apply to grid scale electric power generation, transmission, and distribution facilities. While this could be addressed through regulation, a clarifying change in the discussion draft would provide clarity.

Recommendation:

- In Proposed section 409(b)(11) strike “.” and at the end and insert “, and codes or standards adopted by the relevant industry or utility for the relevant project.”

Cost Estimates and Licensed Professionals

Estimates must be developed by an appropriately licensed professional. However, smaller entities may rely on in-house staff that may have years of experience, but no specific professional license. Proposed section 409(b)(11)(B) further defines “appropriately licensed professional” to include a broad range of professionals “licensed or authorized to work in the relevant State.” It would be helpful to clarify that the authorization could also be provided by the relevant, city, county or local authority.

Recommendation:

- In proposed section 409(b)(11)(B) strike: “authorized to work in the relevant State”; and insert “authorized to work by the relevant State or locality to work in the relevant State or locality.”

Presumption of Accuracy

Estimates are presumed to be accurate and reasonable in the absence of evidence of fraud. It is unclear how FEMA would discern evidence of fraud, and we are concerned that such a review would be an opportunity to impose the full suite of current requirements intended to be avoided under the proposed section 409 process. For example, FEMA currently argues that federal procurement requirements help avoid fraud, so there is a concern that FEMA may seek to require applicants to commit to follow federal procurement requirements as part of the estimation process.

Recommendation:

- The committee should clarify in report language what it intends FEMA’s role to be in reviewing estimates for accuracy and reasonableness.

Cost Estimates and Procurement

There is nothing in proposed section 409 to suggest that an entity that receives a grant will be

required to meet federal procurement requirements for work funded by that grant. However, there is nothing in the remainder of the Stafford Act that requires meeting federal procurement standards either, yet FEMA still interprets the Stafford Act requirement that the “purpose of the grant [be] accomplished”⁴ as including “[C]ompliance with post-award terms and conditions of the federal award, ... including but not limited to applicable requirements ... for federal procurement.”⁵

Again, we believe the discussion draft is intended as a trade-off: access to public assistance is simpler, clearer, and subject to less regulatory risk, but applicants accept the risk that costs may be greater than originally estimated. For example, costs might differ if federal procurement requirements are strictly followed versus following local procurement requirements instead. Amending the discussion draft to specifically codify that federal procurement requirements do not apply would be consistent with the discussion draft’s intent.

Recommendation:

- Insert in proposed section 409(b)(2)(iv) after “estimate”: “by the applicable State or local government procurement [processes].”

Alternative Use of Funds

There is some confusion among stakeholders as to whether an entity would be required to submit a supplemental or alternative cost estimate where the funds of the grant are to be used for a purpose other than repairing the damaged public facility for which an estimate was submitted. Likewise, there is confusion whether any project funded by proposed section 409 would be subject to the current suite of FEMA requirements.

For example, one APPA public power utility reports that functionally speaking, a submission must go through 12 stages of review before completion. This includes:

1. Pending peer review;
2. Pending section 406;
3. Pending insurance completion;
4. Pending insurance review;
5. Pending insurance completion;
6. Pending insurance peer review;
7. Questions and answers review;
8. Pending emergency management mission integrated environment submission;
9. Pending document integrity unit initial validation;
10. Environmental & historic preservation review;
11. Program delivery manager review; and
12. Final FEMA review.

It appears clear from the language of the bill that once an estimate has been submitted and approved, and funds granted, the applicant must use the funds for one of the enumerated uses of proposed section 409(b)(1). The applicant also must provide annual status reports on the projects that are being funded and the status of those projects. However, it also appears clear that the applicant is not intended to have any other obligation to justify its expenses, such as proving that the project met federal procurement requirements, nor can those funds be de-obligated.

⁴ Stafford Act section 705(c)(3).

⁵ FEMA, Stafford Act Section 705, Disaster Grant Closeout Procedures, FEMA Policy 205-081-2, Version 2, at 5.

Recommendation:

- APPA would strongly encourage the committee to clarify its intention for FEMA's post award role either in the discussion draft or report language. Specifically, clarifying that once an award is granted, the project for which the funds are used is subject to none of the reviews listed above, but only the status report prescribed by the discussion draft.

Proposed Section 409(c)(3)

As noted above, while states have generally taken the lead in coordinating public assistance requests in the wake of a disaster, the estimate-based approach may encourage local governments, including public power utilities, to submit their own cost estimate for direct reimbursement. Additionally, the discussion draft seeks to encourage hazard mitigation by providing sliding scale increases in the federal share of project costs. As drafted, however, this sliding scale appears to only be available to state or tribal governments. APPA believes encouraging local governments, including public power utilities, to make hazard mitigation investments is consistent with the discussion draft's goals.

Recommendation:

- In Proposed section 409(c)(3)(A) after "State" insert ", local,".
- In Proposed section 409(c)(3)(A)(ix) strike "and"
- In Proposed section 409(c)(3)(A)(x) at the end strike "."; and insert "(xi) establishing and maintaining mitigation programs intended to increase utility readiness and resiliency, including development of mitigation plans."

Discussion Draft Section 109

Section 109 of the discussion draft amends section 1223 of the Disaster Recovery Reform Act of 2018, to require a study to streamline information collection and preliminary assessments. While important, a major delay in disaster assistance is in the processing of such information. The study could be improved by expanding the scope of the study to include streamlining and consolidating the processing of such information. The website section 1223 would create to host the study could also be used to collect information from stakeholders.

Recommendations:

- The study to streamline and consolidate information collection and preliminary damage assessments should be expanded to also include the processing of such information; and
- The study website should allow state and local entities to report inefficiencies and other concerns.

Extending Proposed Section 409 to Emergency Response

All Stafford Act section 403 and section 406 grants must comply with federal procurement requirements under FEMA guidance. These requirements are challenging to meet at any time. It is harder still to ensure that all the paperwork and documentation required years down the road will be compiled amid the disaster and recovery by crews working endless hours in extremely challenging circumstances while trying to restore power. Likewise, time that could be spent overseeing disaster response is instead spent worrying about adequately documenting expenses. For example, any time food is provided to emergency workers, someone must document who was provided food, prove that

that person was part of the response, and maintain those records for years after the fact in case FEMA seeks to question those costs.

For example, JEA is the largest municipal utility in Florida and one of the largest in the country, providing energy and water services to more than one million residents and businesses in Northeast Florida. JEA's service territory has been hit by four hurricanes in the last decade, including:

- Hurricane Matthew: Incident period from October 3-19, 2016
- Hurricane Irma: Incident period from September 4, 2017-October 18, 2017
- Hurricane Dorian: Incident period from August 28, 2019-September 9, 2019
- Hurricane Ian: Incident period from September 23, 2022-November 4, 2022

JEA has not filed any Category A projects for these disasters, but its effort to recover Category B funds has been challenging. Specifically:

- JEA's service territory was hit by Hurricane Irma (DR4337) on September 10, 2017. Power was restored to 80 percent of customers in 96 hours and JEA completed all work on power restoration within eight days. However, for JEA's two Category B projects that it filed, it took almost three years from the incident period to recover those funds.
- JEA's service territory was hit by Hurricane Dorian (DR4468) on September 4, 2019. Power was restored and JEA completed all work on power restoration to 100 percent of its customers in 24 hours. However, it has been almost six years since the incident period and JEA is still waiting for funds to be received for its one Category B project.
- JEA's service territory was hit by Hurricane Ian (DR4673) on September 28, 2022. Power was restored and JEA completed all work on power restoration to 100 percent of its customers in 72 hours. However, it has been almost three years since the incident period and JEA is still waiting to receive funds for its two Category B projects.

JEA notes that the delay in the recovery of the funds is primarily due to the constant change in FEMA/FDEM staffing, which led to copious requests for the same information previously provided. Additionally, requests to substantiate/validate the same claim varied from one staff member to another when the project is transitioned.

Lakeland Electric is a vertically integrated utility providing generation, transmission, and distribution services with a service territory of approximately 246 square miles that includes the incorporated area of the City of Lakeland, and a number of unincorporated communities lying within a 15-mile radius of the city. The utility has submitted Category A and B requests related to Hurricane Ian and Nicole, with the following results to date:

- Category A Project (Phase 1) created on February 22, 2023, submitted on August 23, 2023, and awarded January 1, 2025, but the monies have not been paid.
- Category A Project (Phase 2) created on February 15, 2023, submitted on September 23, 2023, awarded October 4, 2024, and the money was expended on October 25, 2024.
- Category B Project, the initial submission was made on December 11, 2023, but it is still undergoing the environmental and historic preservation review and remains unpaid.

Keys Energy Services (KEYS), the energy utility for the lower Florida Keys and Key West, was struck by Category 4 Hurricane Irma in September 2017, and sustained more than \$42 million in

restoration costs.

KEYS timely applied to FEMA for reimbursements. Over the past two years, KEYS has had its projects packaged, reviewed, repackaged, and re-reviewed by four different program delivery managers. Over that time, FEMA obligated approximately \$14 million to the State of Florida, of which KEYS has received approximately \$900,000.00.

Eighteen months after the hurricane struck, KEYS was assigned two new program delivery managers, equipped with a Special Projects Team. KEYS had been told this team consists of five people, including two more program delivery managers, working six days per week, 10 hours per day, only on rewriting KEYS projects. By June, the Special Project Team had rewritten and escalated only one in the amount of \$292,000.00 and had instructed the State of Florida to cease review on the previously obligated funds, because the packaging by previous FEMA program managers was, in their words, “a mess.”

Fort Pierce Utilities Authority’s service territory was impacted by Hurricane Nicole in November 2022. Restoration was completed in 77 hours. Category B requests for reimbursements amounted to \$75,000 and reimbursements were received two years later. The delay was due to FEMA’s staffing changes throughout the claim, resulting in multiple requests for the same documentation and varying guidance from Program Delivery Managers.

In all these examples, all the work has long since been completed, and according to APPA’s member utilities, the vast majority of time spent packaging and repackaging claims and endless, and often evolving, demands for documentation. Allowing Stafford Act section 403 grants to also qualify for proposed section 409 grants would be a way to make public assistance simpler, clearer, and subject to less regulatory risk, while shifting some of the cost risk to the applicant.

For example, assume a section of poles and lines were damaged by a tornado. Under current procedures, documentation and paperwork would be extensive, including documenting every single piece of equipment installed (including GPS coordinates for every pole, insulator, and cross arm), staffing records for the repair work, proving that procurement of the equipment met federal requirements, etc. Under proposed section 409, the applicant could instead provide an estimate of the cost to repair and – absent evidence of fraud – the estimate would be assumed to be reasonable and accurate and the grant would be awarded. FEMA would still have substantial oversight.

Recommendation:

- In proposed section 409(a)(1) strike “and” at the end of subparagraph (A);
- Renumber subparagraph (B) as (C)
- Insert after subparagraph A: “(B) to a State or local government or private nonprofit for work and services to save lives and protect property during a major disaster; and”
- In proposed section 409(b)(1) strike “.” at the end; and insert; “; “(F) to fund work and services to save lives and protect property as defined under section 403(a)(3).”

Other Issues

Borrowing to Cover Disaster Costs

Lengthy delays in receiving funds can force public power utilities to borrow substantial amounts of money to bridge the time between disaster impacts and FEMA payment. The interest on these loans

becomes a significant cost to utilities and ultimately their customers.

FEMA has the authority to reimburse the interest on these loans as an eligible cost but has to date chosen not to do so.

As a result, APPA strongly encourages inclusion in the discussion draft the provisions of H.R. 2836, the FEMA Loan Interest Payment Relief Act, which passed in the House of Representatives as H.R. 2672 by voice vote in the 118th Congress.

To the extent the proposed section 409 payment process succeeds, future borrowing (and related interest expenses) might be substantially reduced after disasters. However, public power utilities might still need to borrow funds in certain circumstances, especially if the discussion draft is not amended to extend proposed section 409 to include debris removal or emergency restoration work.

Prestaging Costs

Response and recovery from a major disaster require personnel and equipment from outside the local jurisdiction and sometimes from across the country. Prepositioning such equipment and personnel prior to a forecasted weather event is critical to timely and effective disaster response. Public assistance covers utility-related prestaging costs only when they are used to perform emergency work during a major disaster. However, the scope and path of weather events can change dramatically within the time horizon such prestaging must occur. As a result, equipment and personnel that were prudently deployed to help with restoration and recovery still may go unused. Conversely, failing to fund such steps creates financial pressure in opposition to prudent preparation.

APPA believes that offsetting the cost of prestaging, even where equipment and personnel are not ultimately used, is consistent with the intention of Stafford Act section 403's goals to save lives and protect property. As such, we would strongly encourage the committee to consider amendments to the section to allow for the reimbursement of prestaging even where that equipment or personnel are not ultimately used. Even reimbursement at a reduced rate could provide the support and certainty needed to support prudent weather event preparation decisions.

Conclusion

Thank you again for this opportunity to comment. If you have any questions or would like to discuss any of these issues, please let us know.

Sincerely,

John Godfrey
Senior Government Relations Director
jgodfrey@publicpower.org
(202) 256-7710