U.S. MAYORS SPEAK OUT: ADDRESSING DISASTERS IN CITIES

(111–94)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
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March 3, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management

FROM: Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff

SUBJECT: Hearing on "U.S. Mayors Speak Out: Addressing Disasters in Cities"

PURPOSE OF THE HEARING

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Thursday, March 4, 2010, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony on a report released by the United States Conference of Mayors regarding their proposals on changes to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) as well as related programs, policies, and regulations.[1] The hearing will also focus on issues related to disasters in cities.

BACKGROUND

The Federal Emergency Management Agency (FEMA) is the Federal Government's lead agency for preparing for, mitigating, responding to, and recovering from disasters and emergencies from all hazards, whether natural or man-made. FEMA's primary authority in carrying out these functions is the Stafford Act. In light of experiences in recent disasters, the United States Conference of Mayors created a task force to look at changes that could be made to the Stafford Act as well as FEMA's related policies, regulations, and programs. The Chairman of this task force is Mayor C. Ray Nagin of New Orleans, Louisiana and the Vice Chair is Kevin Johnson of Sacramento, California. Mayor T.M. Frank Cownie of Des Moines, Iowa, Mayor Robert J. Duffy of

[1] Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (2009).

Rochester, New York, and 22 other mayors also served on the task force. The task force issued a report entitled "Report of the Stafford Act Reform Task Force" (USCM Report) in January 2010.[2]

I. Assistance Available under the Stafford Act

FEMA's major Stafford Act programs for disaster response and recovery in the aftermath of a major disaster are the Public Assistance program and the Individual Assistance program. The Public Assistance program, authorized primarily by sections 403, 406, and 407 of the Stafford Act,[3] reimburses State and local emergency response costs and provides grants to State and local governments, as well as certain private non-profits to rebuild facilities. The Public Assistance program generally does not provide direct services to citizens.

The Individual Assistance program, also known as the Individuals and Households program, is primarily authorized by section 408 of the Stafford Act.[4] The program provides assistance to families and individuals impacted by disasters, including housing assistance. Housing assistance includes money for repair, rental assistance, or "direct assistance", such as the provision of trailers and mobile homes. This section also authorizes the "other needs program", which provides grants to mostly low-income families for loss of personal property, as well as disaster-related dental, medical, and funeral costs to individuals regardless of income. Other Individual Assistance programs authorized by the Stafford Act include: unemployment assistance (section 410),[5] disaster food stamps (section 412),[6] disaster legal services (section 415),[7] and crisis counseling (section 416).[8]

Section 404 of the Stafford Act[9] authorizes the Hazard Mitigation Grant Program (HMGP). HMGP is an important part of the recovery effort. HMGP provides grants to State and local governments to rebuild after a disaster in ways that are cost effective and reduce the risk of future damage, hardship, and loss from all hazards. FEMA also provides grants under HMGP to assist families affected by a disaster to reduce the risk of damage to their homes in the event of future disasters, through such steps as elevating the home or purchasing the home to remove it from the floodplain.

The Stafford Act provides for two categories or "levels" of incidents: "major disasters" and "emergencies". A "major disaster" is defined in section 102(2) of the Stafford Act as:

> Any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available

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[2] The report can be found at: http://www.usmayors.org/pressreleases/uploads/StaffordActReformTaskForceReport.pdf.
[3] 42 U.SC. §§ 5170b, 5172 and 5173 (2009).
[4] 42 U.S.C. § 5174 (2009).
[5] 42 U.S.C. § 5177 (2009).
[6] 42 U.S.C. § 5179 (2009).
[7] 42 U.S.C. § 5182 (2009).
[8] 42 U.S.C. § 5183 (2009).
[9] 42 U.S.C. § 5170c (2009).

> resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.[10]

An "emergency" is defined in section 102(1) of the Stafford Act as:

> Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.[11]

The primary distinction between a major disaster and an emergency is that emergencies are primarily "lesser events" that are limited in cost[12], or can be declared to "lessen or avert the threat of a catastrophe" (such as funding activities to protect citizens and communities prior to the landfall of a hurricane). There is also a difference in what programs are available in an emergency declaration versus a major disaster declaration. Section 502 of the Stafford Act[13] describes the types of assistance available in an emergency, including debris removal, emergency response costs, and the Individual Assistance programs authorized by section 408 of the Stafford Act (i.e. housing assistance and the "other needs" program). In an emergency declaration, there is no assistance for permanent repair or replacement of public or private non-profit infrastructure or hazard mitigation under HMGP. In addition, those Individual Assistance programs authorized outside of section 408 of the Stafford Act (e.g. crisis counseling and disaster legal services) are not available.

II. Recommendations from the U.S. Conference of Mayors Report

The USCM Report makes a number of recommendations regarding the Stafford Act as well as FEMA's programs, regulations, and policies which implement the Stafford Act. The following is a discussion of some of the key recommendations as well as analysis of some of the recommendations. It should be noted that not all of the recommendations require statutory changes, and in some cases the recommendations are already being addressed by FEMA or have been included in legislation which the Committee has already considered.

Catastrophic Disasters

In light of the magnitude of Hurricane Katrina and the difficulty many Gulf Coast communities faced after that disaster, there have been calls to re-examine the Stafford Act as well as FEMA's administration of its authority under the Stafford Act, including whether the current statute is sufficient to address catastrophic disasters. For the most part, disasters of a catastrophic magnitude would also meet the definition of a major disaster,[14] and therefore, any additional

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[10] 42 U.S.C. § 5122 (2009).
[11] *Id.*
[12] Under section 503(b) of the Stafford Act (42 U.S.C. § 5193) emergencies are generally limited to $5 million unless the President reports to Congress. The $5 million limitation is often exceeded.
[13] 42 U.S.C. § 5192 (2009).
[14] Since the definition of emergency is all inclusive (i.e., "any occasion or instance"), it is broader than the definition for a major disaster, and therefore theoretically there are events that could possibly have catastrophic consequences and not meet the definition of a major disaster. The possibility is remote. For example, all the terrorist events for which FEMA has used its Stafford Act authority have met the definition of a major disaster. Even if an event did not meet the definition of a major disaster, FEMA's emergency authorities would likely provide adequate authority for weeks, if not

assistance for catastrophic events should be based on what assistance is available for a major disaster. The USCM Report recommends a catastrophic designation in the Stafford Act "to differentiate 'catastrophic disaster' as one which has more devastating impact than a 'major disaster'."[15]

A number of other proposals have been made for such a designation of a "catastrophic annex" to the Stafford Act.[16]

It is difficult to define a catastrophe. From the perspective of the communities and citizens, the impact of virtually all disasters is catastrophic. The definitions of major disaster and emergency are already quite broad and provide the President a great deal of discretion. Some have suggested that specific types of hazards be included, such as a terrorist attack. However, the severity of the consequences is what denotes a catastrophic event, not the particular hazard that caused the event. Like all of emergency management, planning for catastrophic disasters encompasses an all hazards approach.

In 2006, Congress enacted the Post-Katrina Emergency Management Reform Act of 2006,[17] which addressed some of the potential gaps related to catastrophic disasters. Most of these new provisions are related to planning and response, but not recovery. With respect to planning, the Post-Katrina Emergency Management Reform Act included the definition of a "catastrophic incident" as:

> Any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;[18]

This definition provides the scope of planning activities for the Federal Government to prepare for a catastrophic incident. However, such a definition may be too broad to be used as a trigger for extraordinary authority to provide Federal assistance in the aftermath of such an event.

In addition, the Post-Katrina Emergency Management Reform Act provided for additional authority for response activities including: "accelerated Federal Assistance", which can be provided in the absence of a State request, in certain situations during the response to a major disaster[19] or an

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months, in the event of a catastrophic incident, while the President and Congress could decide on any additional authority for such event.

[15] U.S. Conference of Mayors, *Report of the Stafford Act Reform Task Force* (Jan. 2010).

[16] See, e.g. Francis X. McCarthy, Congressional Research Service, testimony before the Committee of Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, of the United Sates House of Representatives – *Post Katrina: What it Takes to Cut the Bureaucracy and assure a More Rapid Response After a Catastrophic Disaster* (July 27, 2009); Mitchell L. Moss and Charles Shelhamer, *The Stafford Act Priorities for Reform,* The Center for Catastrophe Preparedness and Response, New York University (2007), at 15 to 16; and *Far From Home: Deficiencies in Federal Disaster Housing Assistance After Hurricanes Katrina and Rita Recommendations for Improvement.* Report of the Ad Hoc Subcommittee on Disaster Recovery of the Senate Committee on Homeland Security and Government Affairs, Senate Report 111-7 (February 2009), at 278-280.

[17] Title VI of P.L. 109-295.

[18] 6 U.S.C. § 701(4) (2009).

[19] 42 U.S.C. § 5170a (2009).

emergency[20]; expedited payments for debris removal[21]; use of local contractors for Federal disaster response contracts[22]; and the rescue, care, and shelter for pets and individuals and households with pets[23].

There are two characteristics of catastrophic disasters that may make new broad authority for recovery unnecessary. First, catastrophic disasters are complex, unusual, and hard to predict. Second, because of their magnitude, the shift from response to recovery often takes weeks or months, rather than days. Therefore, while the needs may be greater, there may be time to be deliberative and provide for specific and targeted authority for the unique problems presented in the recovery of a particular catastrophic disaster.

While every catastrophic disaster would likely have unique problems that would warrant targeted solutions, one difference from other disasters is that the need for Federal assistance would likely be more than what is necessary to "supplement the efforts and available resources of States, local governments, and disaster relief organizations"[24]. There are a number of specific program requirements in FEMA's disaster programs that require that Federal disaster assistance be supplemental, and not supplant other sources of funding or assistance. These provisions would likely be an issue in any catastrophic disaster because the damage is likely to be so significant that supplementing State and local efforts would not be sufficient. The USCM Report makes recommendations related to these FEMA program requirements, including:

Provide automatic 100 percent funding for all categories of eligible work in the Public Assistance program - The Stafford Act already provides that Federal share assistance under sections 403, 406 and 407[25] shall be "not less than 75 percent". FEMA regulations set forth under what conditions FEMA will recommend that the President exercise this discretion. However, the President is not bound by this recommendation and therefore can provide higher levels of assistance under current law.[26]

Provide 100 percent federal cost share for hazard mitigation - Under section 404 of the Stafford Act,[27] "The President may contribute up to 75 percent of the cost of hazard mitigation measures". Therefore, in order to implement this recommendation, a statutory change would need to be made. While a 100 percent Federal cost share may be warranted in a catastrophic disaster, it would be unprecedented.[28]

Cover the rapid restoration of private for profit utilities after a catastrophic disaster - Assistance under the Public Assistance program is primarily for State and local government facilities.[29] However, the Stafford Act also provides assistance to a limited universe of private non profit (PNP) organizations

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[20] 42 U.S.C. § 5192 (2009).
[21] 42 U.S.C. § 5173 (2009).
[22] 42 U.S.C.§ 5150 (2009).
[23] 42 U.S.C..§ 5170b (2009).
[24] 42 USC § 5122(2) (2009).
[25] 42 U.S.C. §§ 5170b. 5172 and 5173 (2009).
[26] 44 C.F.R. 206.47.
[27] 42 U.S.C. § 5170(c) (2009).
[28] Under the Insular Areas Act (48 U.S.C. § 1469a(d)) FEMA may adjust the cost share for the HMGP for insular areas (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). According to FEMA, they have generally only adjusted the Federal cost share to 90 percent.
[29] *See* section 406(a)(1)(A).

that perform services of a "governmental nature". For example, it doesn't matter whether a fire house is owned by the local government or a private non-profit, as it performs a service of a governmental nature. Like municipally-owned utilities, private non-profit utilities are also eligible for assistance under the Stafford Act.

After a disaster, assistance provided directly to for profit businesses is provided through the Small Business Administration (SBA), under the authority of the Small Business Act[30] rather than through FEMA. SBA assistance takes the form of loans, not grants. In addition, businesses are encouraged and expected to protect the investments in their business through insurance and preparedness measures such as a continuity of operations plan.

While FEMA does not provide Public Assistance grants to businesses, businesses benefit indirectly from that program. For example, the authority to reimburse State or local governments to remove debris from private property includes debris on commercial property as well as homes. In addition, businesses receive indirect benefits from repairs to public facilities such as roads, sewers, and water systems.

Individual and Household Assistance

The USCM Report makes a number of recommendations regarding the Individual and Households program authorized by section 408 of the Stafford Act. These include:

Provide temporary mortgage or rental payments for individuals or families who face financial hardship caused by a disaster – Congress struck the Mortgage and Rental Assistance (MRA) program from the Stafford Act in 2000. This recommendation is addressed in section 202 of H.R. 3377 as ordered reported by the Committee, which allows FEMA to provide assistance for up to 18 months in the form of mortgage or rental payments to individuals and families who, as a result of financial hardship caused by a major disaster, are at imminent risk of dispossession or eviction from their residence.

Allow all evacuees regardless of citizenship status to be eligible for Individual Assistance so that they do not become a burden on local host communities – Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,[31] FEMA can only provide assistance to citizens, non-citizen nationals, and qualified aliens. Therefore, implementing this recommendation would require legislation that is outside the jurisdiction of the Transportation and Infrastructure Committee.

Create a national disaster Case Management Program which provides a comprehensive approach to disaster recovery that will ensure interagency cooperation. – Case management services are already authorized by section 426 of the Stafford Act.[32] Section 204 of HR 3377 amends this provision to ensure that FEMA is the lead agency for coordinating case management and therefore provide a comprehensive approach.

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[30] 15 U.S.C. §§ 631-651e (2009).
[31] P.L. 104-193.
[32] 42 U.S.C. § 5189d (2009).

Hazard Mitigation Grant Program

The USCM report also addresses hazard mitigation. Some of their recommendations are discussed in the section on catastrophic disasters. In addition, the Mayors recommend:

Increase the amount of Hazard Mitigation Grant Program funding by 4 percent of the estimated aggregate amount of the grant for both state and local jurisdictions that have building codes consistent with or more stringent than the most recent nationally recognized model building codes if adopted within six years of the most recent version of that code – This is addressed in section 201 of H.R. 3377 as ordered reported by the Committee, which amends section 404 of the Stafford Act by providing for additional assistance under HMGP for States that actively enforce an approved building code throughout the State.

Insurance

Generally, FEMA and the Stafford Act encourage citizens, communities, and non-profits eligible for assistance under the Stafford Act to obtain insurance coverage to protect themselves and reduce the risk to taxpayers.[33] While insurance requirements appear in various provisions of the Stafford Act, the two main provisions dictating insurance rules in the Stafford Act are sections 311[34] and 312[35]. Section 312 addresses "duplications of benefits" and states a general prohibition against providing assistance that is available from "any other program, or from insurance or any other source."[36] However, section 312 permits assistance to be provided, pending the payment of insurance claims, if the applicant agrees to reimburse the Federal Government. Section 312 also allows for reimbursement for any part of the loss not covered by insurance.

Several provisions of the USCM Report specifically address insurance, including:

Waive proof of insurance requirements for Individual Assistance recipients initially so that immediate assistance can be provided to those in need. Require recipients to reimburse the program when and if insurance claims payments are made – This recommendation appears to be authorized already by section 312 of the Stafford Act, which allows FEMA to reimburse for damages also covered by insurance, provided that the recipient agrees to reimburse the Federal Government when the recipient receives insurance proceeds.

Establish criteria whereby local government entities other than just states may be authorized to self insure. – Currently under section 311 of the Stafford Act, only States may meet their insurance requirements through self insurance.

Allow jurisdictions to reimburse the federal government for insurance claims payments received during the close out phase of the grant rather than deducting the anticipated amount from a Public Assistance grant up front. – FEMA appears to already have the authority to implement this provision provided that applicant agrees to reimburse the Federal Government. FEMA should consider using this authority, especially when the slow payment of insurance claims is impeding recovery.

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[33] See section 101(b)(4) of the Stafford Act, 42 U.S.C. 5121(b)(1).
[34] 42 U.S.C §. 5154 (2009).
[35] 42 U.S.C. § 5155 (2009).
[36] *Id.*

Other issues

Give grant standing to local governments that are Community Development Block Grant entitlement communities as grantees for all disaster grant programs including Hazard Mitigation so that they may deal directly with the federal government - Under the Public Assistance program and HMGP, States are the grantees for all grants made by FEMA and local governments are subgrantees. There are a number of reasons for this, including easier program administration and the additional accountability that state administration provides over disaster assistance. However, this is also based on the direct constitutional and statutory responsibility that most, if not all, States (acting through their Governors) have during disasters and other emergencies.[37] This is particularly important during the immediate response to the disaster. During the recovery phase of a disaster, FEMA still continues to work through states in providing assistance to local governments.[38] However, one exception to this rule is for Indian Tribes, who, despite being defined as a local government under the Stafford Act, may choose to receive assistance directly from the Federal Government under the Public Assistance program and HMGP or apply through a State.[39] This is in recognition that the "Federal Government operates within a government-to-government relationship with Federally-recognized Tribal governments".[40]

The Stafford Act and related laws and amendments should be consolidated into one code to reduce variable and conflicting interpretations and to provide clearer guidance for FEMA and communities working to apply disaster policy, regulation, and law in preparedness, response, mitigation, and recovery - In recent years, some provisions of law directly related to the Stafford Act and FEMA's disaster program have been authorized outside the Stafford Act. In H.R. 3377, the Committee continues its practice of authorizing all FEMA programs and related disaster and emergency management authorities under the Stafford Act.

H.R. 3377, THE "DISASTER RESPONSE, RECOVERY, AND MITIGATION ENHANCEMENT ACT OF 2009"

H.R. 3377, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2009", was ordered reported by the Committee on November 5, 2009. It contains the Committee's proposals for amendments to the Stafford Act. Specifically, it reauthorizes certain FEMA programs and activities, codifies other programs that FEMA is currently administering under the authority of the Stafford Act but which are not expressly authorized in statute, amends eligibility under FEMA programs, and makes technical corrections to the Stafford Act. H.R. 3377 contains the following provisions which are particularly relevant to the USCM report and today's hearing:

Section 101. Pre-Disaster Hazard Mitigation. This section amends section 203 of the Stafford Act to authorize the Pre-Disaster Mitigation (PDM) program through fiscal year (FY) 2012 at a level of $250 million per year and makes improvements to the program, including requiring that projects

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[37] *See* National Governors Association, Policy Position - HHS-13, *Emergency Management* (Feb.27, 2008), http://www.nga.org/portal/site/nga/menuitem.8358ec82f5b198d18a278110501010a0/?vgnextoid=209a9e2f1b091010VgnVCM1000001a01010aRCRD.

[38] *See* 44 C.F.R. 206.202(a).

[39] *See* 74 F.R. 60208, November 20, 2009.

[40] *See* FEMA Tribal Policy (September 25, 1998), http://www.fema.gov/government/tribal/natamerpolcy.shtm.

are selected through a competitive process. The PDM program provides cost-effective technical and financial assistance to State and local governments to reduce injuries, loss of life, and damage to property caused by natural hazards. This important program will sunset on September 30, 2010, unless Congress acts.

Section 102. Integrated Public Alert and Warning System Modernization. This section amends section 202 of the Stafford Act to direct the President to modernize the integrated public alerts and warning system. This section requires FEMA to lead the modernization of Emergency Alert System (EAS); have certain capabilities and meet requirements to modernize the system; develop a system that incorporates multiple communication technologies; provide redundant alert mechanisms; implement pilot programs to demonstrate feasibility; and establish an Advisory Committee comprised of a broad range of stakeholders to develop recommendations for the public alert and warning system under a specific timeline.

Sec. 105. National Urban Search and Rescue Response System. This section authorizes the National Urban Search and Rescue System (US&R) as a new section of the Stafford Act. The activities of the US&R system are currently authorized in various sections of the Stafford Act, but the program is not codified. The US&R is a robust system of 28 teams compromised of State and local responders who work together to respond to both local incidents and major disasters and emergencies under the Stafford Act. These teams provide a very specialized and critical capability that our nation has called upon numerous times since the inception of the US&R system nearly two decades ago. This section also codifies workers compensation and tort liability protection that is currently provided administratively. It also provides new protections to members of US&R teams deployed in response to a disaster under the Uniformed Services Employment and Reemployment Rights Act (USERRA), as well as licensing and professional liability protection.

Sec. 106. Disaster Relief Fund. This section authorizes the Disaster Relief Fund, which was created in appropriations law and is not currently codified in the Stafford Act. The Disaster Relief Fund, funded by Congressional appropriations, provides funding for FEMA's Federal disaster programs authorized by titles IV and V of the Stafford Act, including Individual Assistance and Public Assistance programs. This section also authorizes the Disaster Support Account, which was created in the late 1990s, and provides for ongoing capabilities that are not readily attributable to one specific disaster.

Sec. 201. Additional Mitigation Assistance. This section amends section 404 of the Stafford Act by providing for additional assistance under HMGP for States that actively enforce an approved building code throughout the State.

Sec. 202. Temporary Mortgage and Rental Payments. Pursuant to the Disaster Mitigation Act of 2000 (P.L. 106-390), Congress struck the Mortgage and Rental Assistance (MRA) program from the Stafford Act effective in 2002. Ironically, this program was most used after the provision was repealed (but before the repeal took effect) in New York, New York, after the terrorist attacks of September 11, 2001. This section is very similar to the repealed version and allows FEMA to provide assistance for up to 18 months in the form of mortgage or rental payments to, or on behalf of, individuals and families who, as a result of financial hardship caused by a major disaster, are at imminent risk of dispossession or eviction from a residence due to foreclosure of any mortgage or lien, cancellation of any contract for sale, or termination of any lease entered into prior to the

disaster. This section corrects one of the major weaknesses of the prior law provision, which required a written notice of dispossession or eviction.

Sec. 301. Emergency Management Assistance Compact Grants. This section reauthorizes the Emergency Management Assistance Compact (EMAC) as section 618 of the Stafford Act. EMAC provides form and structure to interstate mutual aid and allows a State impacted by a disaster to request and receive assistance from other states quickly and efficiently. The current authorization for EMAC expired at end of FY 2008.

Sec. 305. Ability to Provide Disaster Information to Individuals with Limited English Proficiency and to Individuals with Disabilities. This section requires the Comptroller General to conduct a study on the ability of existing alert and warning systems to provide information regarding disasters to individuals with limited English Proficiency and to individuals with disabilities.

Sec. 308. Debris Removal. This section authorizes the President to increase the cost share by five percent for States and local governments that have a debris management plan. This section codifies and makes permanent a pilot project authorized by the Post-Katrina Emergency Management Reform Act.

Sec 309. Review of Regulations and Policies. This section requires the President to review FEMA's regulations and policies related to Federal disaster assistance within one year of the date of enactment.

Sec. 310. Appeals Process. This section amends the Stafford Act to change the deadline for decisions on appeals on disaster assistance from 90 days to 60 days. It also requires a written explanation of the failure to make this deadline to the applicant and quarterly reports to Congress.

Sec 312. Issuance of Regulations Related to Eligible Costs. This section requires the President, within 180 days of the date of enactment, to issue regulations to implement a provision from the Disaster Mitigation Act of 2000 to allow cost estimates to be used in the Public Assistance program for damaged facilities.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY

In the 111th Congress, the Committee on Transportation and Infrastructure acted on the following bill related to the Stafford Act and FEMA's disaster assistance program:

- **H.R. 3377, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2008"**: This legislation amends the Stafford Act to improve the assistance the Federal Government provides to States, local governments, and communities after major disasters and emergencies. On November 5, 2009, the Committee ordered H.R. 3377 reported favorably to the House.

- **H.R. 1174, the "FEMA Independence Act of 2009"**: This legislation removes FEMA from the Department of Homeland Security and reinstates FEMA as an independent, cabinet-level agency. On November 5, 2009, the Subcommittee on Economic

- **H.R. 1746, the "Pre-Disaster Mitigation Act of 2009"**: This legislation reauthorizes and makes improvements to FEMA's Pre-Disaster Mitigation Program, including codification of the competitive aspects of the program. On April 27, 2009, the House passed H.R. 1746 by voice vote.

In the 110th Congress, the Committee on Transportation and Infrastructure acted on the following bills related to FEMA:

- **H.R. 6658, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2008"**: This legislation amends the Stafford Act to improve the assistance the Federal Government provides to States, local governments, and communities after major disasters and emergencies. On July 31, 2008, the Committee ordered H.R. 6658 reported favorably to the House.

- **H.R. 6109, the "Pre-Disaster Mitigation Act of 2008"**: This legislation reauthorizes FEMA's Pre-Disaster Mitigation program and makes improvements, including codification of the competitive aspects of the program. On June 23, 2008, the House passed H.R. 6109 by voice vote.

- **H.R. 3247, the "Hurricane Katrina and Rita Recovery Facilitation Act of 2007"**: This legislation provides additional Federal relief targeted to the recovery from Hurricanes Katrina and Rita in Louisiana and Mississippi. On October 29, 2007, the House passed H.R. 3247 by voice vote.

- **H.R. 1144, the "Hurricanes Katrina and Rita Federal Match Relief Act of 2007"**: This legislation provides significant relief for communities devastated by Hurricanes Katrina, Rita, and Wilma, by raising the Federal cost share for critical disaster relief programs to 100 percent and by authorizing the cancellation of Community Disaster Loans under certain conditions like all previous Community Disaster Loans. H.R. 1144 was enacted as part of P.L. 110-28, the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007".

In the 111th and 110th Congresses, the Committee and Subcommittee held numerous hearings related to the Stafford Act and FEMA's disaster program, including:

- "FEMA's Urban Search and Rescue Program in Haiti: How to Apply Lessons Learned at Home" (February 3, 2010)
- "This is NOT a Test: Will the Nation's Emergency Alert System Deliver the President's Message to the Public?" (September 30, 2009)
- "Final Breakthrough on the Billion Dollar Katrina Infrastructure Logjam: How is it Working?" (September 29, 2009)
- "Post Katrina: What it Takes to Cut the Bureaucracy" (July 29, 2009)
- "Still Post-Katrina: How FEMA Decides When Housing Responsibilities End" (May 22, 2009)

- "An Independent FEMA: Restoring the Nation's Capabilities for effective Emergency
- Management and Disaster Response" (May 14, 2009)
- "FEMA: Preparedness for the 2009 Hurricane Season" (May 1, 2009)
- "Post-Katrina Disaster Response and Recovery: Evaluating FEMA's Continuing Efforts in the Gulf Coast and Response to Recent Disasters" (February 25, 2009)
- "FEMA's Response to the 2008 Hurricane Season and the National Housing Strategy" (September 23, 2008)
- " Moving Mississippi Forward: Ongoing Progress and Remaining Problems" (June 19, 2008)
- "Assuring Public Alert Systems Work" (June 4, 2008)
- "Saving Lives And Money Through The Pre-Disaster Mitigation Program" (April 30, 2008)
- "Readiness in the Post Katrina and Post 9.11 World: An Evaluation of the New National Response Framework" (September 11, 2007)
- "Assuring the National Guard is as Ready at Home as it is Abroad" (May 18, 2007)
- "Legislative Fixes for Lingering Problems that Hinder Katrina Recovery" (May 10, 2007)
- "FEMA's Preparedness and Response to All Hazards" (April 26, 2007)
- "FEMA's Emergency Food Supply System" (April 20, 2007)
- "Post Katrina Temporary Housing: Dilemmas and Solutions" (March 20, 2007)

WITNESSES

Mr. Robert J. Duffy
Mayor
City of Rochester

Mr. C. Ray Nagin
Mayor
City of New Orleans

Mr. Franklin Cownie
Mayor
City of Des Moines

Mr. Dave Maxwell
Vice-President
National Emergency Management Association

Mr. Larry Gispert
Past President
International Association of Emergency Managers

Mr. Chad Berginnis
Senior Specialist
Hazard Mitigation and Floodplain Management
Michael Baker Corporation
Testifying on Behalf of:
Association of State Flood Plain Managers

U.S. MAYORS SPEAK OUT: ADDRESSING DISASTERS IN CITIES

Thursday, March 4, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:09 p.m., in Room 2167, Rayburn House Office Building, Hon. Eleanor Holmes Norton [Chair of the Subcommittee] presiding.

Ms. NORTON. We apologize for the delay, but we are pleased to say good afternoon and welcome to all, especially to our witnesses, and particularly our three mayors, to today's hearing which will address the recent report of the United States Conference of Mayors, a Stafford Act Reform Task Force, and disasters. And we will be speaking about disasters in cities in particular. This report from mayors who have on-the-ground experience with emergencies and disasters is an important contribution to the Subcommittee's ongoing work to improve the Robert G. Stafford Disaster Relief and Emergency Assistance Act.

We are pleased that the United States Conference of Mayors convened its task force of 24 mayors to review and make recommendations on the Stafford Act, as well as on the Federal Emergency Management Agency's programs, regulations and policies. Today we will receive testimony from three of the mayors who are members of the task force, as well as from professional emergency managers and floodplain managers regarding the task force recommendations.

The task force report is comprehensive, covering a number of areas, including catastrophic disasters, hazard mitigation, individual and household assistance, insurance, emergency preparedness and response, and FEMA administration. Many of the recommendations in the report have wide support and agreement, and some are already in legislation or on the way to the floor with legislation. However, in other cases, as we will hear today, some of the recommendations may require further analysis and discussion.

Not all of the report's recommendations require legislation, I am pleased to say. Many could be implemented by FEMA administratively through regulations or changes in policies. And the Subcommittee has always encouraged much greater use of FEMA's considerable administrative authority, and also say for the record that we regret very much that often the Subcommittee has had to enact legislation that we did not believe was required because

FEMA did not use the considerable authority that it already has. And we will be watching attentively to see whether FEMA is quick to dig into these recommendations to pursue them on its own to the greatest extent possible.

We recognize that there are some cases in which law will be necessary, and we are prepared to consider those changes. The Committee already has addressed some of the recommendations in legislation, including H.R. 3377, the Disaster Response Recovery and Mitigation Enforcement Act of 2009, and other legislation that I am pleased to be a co sponsor of, along with Chairman Oberstar and Ranking Members Mica and Diaz-Balart. H.R. 3377 reinstates the Mortgage and Rental Assistance program and contains a provision to provide additional mitigation assistance to States that adopt building codes. And if you have watched what has happened in Haiti and in Chile—I don't know why I want to say Costa Rica and Chile—you will understand the importance of the assistance we will give to jurisdictions that adopt their own building codes.

Both of these ideas are recommended by the task force report. H.R. 3377 has already been ordered reported favorably to the House, and I expect it to be taken up by the full House soon.

I am pleased to recognize the mayors who are testifying on behalf of the U.S. Conference of Mayors, including Mayor Franklin Cownie of Des Moines, Iowa, and Mayor Robert Duffy of Rochester, New York.

If I may, I shall say a special word about Mayor Ray Nagin, who also is testifying and has testified before the Subcommittee a number of times. This is likely the last time he will testify as mayor of New Orleans. We commend Mayor Nagin for leading his city through the greatest natural disaster to strike our Nation and for chairing the task force to help ensure that cities across the Nation can learn from his experience and the experience of the citizens of his city.

We look forward to hearing the testimony of all of today's witnesses about how we can improve how our Nation addresses disasters in cities.

Ms. NORTON. Why don't we proceed with the mayors in the order in which they have seated themselves, or maybe the Chairman would like to go first.

Mayor Nagin, would you like to go first?

Mr. NAGIN. Yes, Madam Chair, I would.

Ms. NORTON. Well, I am sorry, there is a Ranking Member here today, even though Mr. Diaz-Balart is not here. Well, he is here almost. And if he would like to offer an opening statement or—he will offer his usual opening statement.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you very much, Madam Chairwoman. I apologize for being a couple of minutes late.

I want to thank you, Madam Chairwoman, for holding this hearing today on addressing disasters in cities and the recommendations of the U.S. Conference of Mayors.

In January, as everybody knows, the U.S. Conference of Mayors Stafford Act Reform Task Force issued its recommendations on how we can better improve, and prepare really, and mitigate against and respond to future disasters. The task force began its work in

September and included representatives from a number of cities, including two in Florida, I might add, and we are very proud of that. Unfortunately it is because Florida has too much experience in these issues, not something that we have done by choice, mayors, as you know. The Chair of this task force is Mayor Nagin of New Orleans, and we thank him for being here today.

As a Member from the State of Florida, a State that has seen and continues to see its share of disasters, I particularly appreciate the experience and work that the task force members put into developing their recommendations.

Look, you know, we all know that Hurricane Katrina was a wake-up call, a big wake-up call. It has now been nearly 5 years since Katrina hit the Gulf Coast and devastated parts of Louisiana, Mississippi, Texas and Alabama. And since that time I think Congress has taken a number of important steps to strengthen FEMA and our Nation's emergency management capability, including, not limited to, but including, passing the Post-Katrina Reform Act.

But while legislation took important steps to improve preparedness and response, there is obviously a lot more work that remains to be done. For example, all too often recovery following a major disaster has been slowed by red tape, bureaucratic red tape, and by inflexible policies in some cases. And the impact of this red tape is especially magnified following a large-scale disaster when assistance is critical to rebuilding local communities. And we know that that is a long and arduous and difficult process. In hearing after hearing we have received testimony about the slow and—you know, that slow process which communities have to try to navigate and have to try to figure out in many cases.

Congressman Cao, who is sitting now as Ranking Member— and, again, thank you, sir, for starting, and, again, I apologize to you and the Chairwoman for being a little late—has worked tirelessly to cut through the bureaucracy and free up funding for the recovery in Louisiana. And I again once again want to publicly, as I have done before, thank him for his tireless efforts in trying to get that done.

Last year Ranking Member Mica hosted two roundtables at Congressman Cao's request to bring together FEMA and the State and local representatives to try to work through some of that funding backlog. And last year a new arbitration process was established to expedite recovery funding, which really has freed up more funds for the rebuilding of Louisiana. But—and again, but it should not have to take roundtables and meetings and arbitration panels to cut through the bureaucratic red tape. Responsible changes to the Stafford Act and FEMA policies can go a long way to speed up the recovery of communities devastated after natural disasters like hurricanes.

We understand that Administrator Fugate, as you all know, somebody who has vast experience, is committed to reviewing FEMA's policies, to examining the ways to streamline and improve FEMA's role in assisting State and local communities. For example, allowing for the mitigation reconstruction of damaged structures would make more sense in many cases than simply elevating old structures to mitigate against flooding, which does little to protect against wind. Again, those are some common sense ideas. This is

just one of many examples of changes that can't be done administratively without requiring Congress to act without legislation.

In this Congress I worked with Chairwoman Norton of the Subcommittee, along with Chairman Oberstar and Ranking Member Mica, on H.R. 3377, the Stafford Act bill, which was ordered reported in November. That bill includes provisions intended to improve preparedness and mitigation, including incentives for building codes, improving the Nation's public alert and warning system, and providing for the transfer of excess goods and housing units to local communities. It also includes proposals recommended by Congressman Cao to provide more flexibility in response to widespread disasters.

As we move forward on this important piece of legislation, input from you all, from the mayors, is, frankly, critical. I know you are on the front lines of these issues. So good planning and response to a disaster starts with you all, right, at the local level, local and then State levels. And we know that many mayors in local communities unfortunately have firsthand knowledge, practical knowledge, of what may need to be improved and may need to be changed.

And I say—I mean, obviously it is an experience I know that all of you wish you didn't have to have, but unfortunately you do have it, and we have had instances in the past, and we know that they are going to come again in the future.

I hope that today we will be able to examine closely the recommendations of the U.S. Conference of Mayors to better inform our consideration of changes to the Stafford Act. I want to first, again, thank you, the witnesses, for joining us today. And I would be remiss without thanking once again the Chairwoman of this Committee for her leadership.

Thank you, Madam Chairwoman.

Ms. NORTON. Thank you very much, Mr. Diaz-Balart.

Ms. NORTON. Opening remarks from Mr. Cao.

Mr. CAO. Thank you very much, Madam Chair.

First of all, I want to extend my thanks as always to you and to Ranking Member Diaz-Balart for your unwavering support for the District and for the recovery of Orleans and Jefferson Parishes. I want to also extend my thanks to our witnesses today and look forward to a real nuts-and-bolts discussion about the act, which plays such a critical role in disaster preparedness, response and recovery.

I appreciate the U.S. Conference of Mayors being here today, and, as you know, the Conference of Mayors is being led by my own mayor, Mayor Ray Nagin, who more than anyone knows the effects of disasters on a city and its population. And, Madam Chair, I just want to reiterate that. I also noticed that he has been here quite often. And since he is leaving, it makes me wonder whether or not he is seeking my seat.

Mr. NAGIN. You don't have to worry about that, Congressman.

Mr. CAO. But we know it has been 4-1/2 years from one of the greatest disasters in the history of this Nation when Hurricane Katrina destroyed my district, and major institutions like our universities were closed for business for several months after the storm, and many remain closed after waiting years for recovery as-

sistance. Many of our critical institutions like Charity Hospital and basically the entire health care infrastructure in the hardest-hit New Orleans East have never reopened. Basic services like hospital, police, fire and rescue, libraries and schools were wiped away by the floodwaters, or today they are simply empty shells of buildings.

In the immediate area around New Orleans, 80 percent of the buildings and 50 percent of the housing stock were damaged in some way. This is to say nothing of the thousands who tragically lost their lives as the waters rose around them and literally engulfed them.

This happened in the greatest Nation on Earth and stands to happen again if the way we think about disaster preparedness, response and recovery is not dramatically changed. Recovery has been too slow-going, and this is due in large part to the red tape that is at FEMA. The Stafford Act is currently set up to provide recovery dollars on a project-by-project basis. For the Gulf Coast States that were hit by the massive and widespread destruction of Hurricanes Katrina and Rita, this process just did not work.

After talking with my constituents, Federal officials, local officials, including Mayor Nagin, and FEMA Administrator Fugate about what changes need to be made to the Stafford Act, I took action. So in September of last year, I introduced H.R. 3635, the Disaster Relief and Recovery Development Act. This bill has the support of the entire Louisiana delegation. H.R. 3635 was a step in the right direction so that communities hit by disaster never have to go through the anemic recovery that we had to endure in my district and along the Gulf Coast.

As introduced, the bill would streamline operations and increase accountability and transparency by FEMA by calling for review of FEMA regulations and requiring a report to Congress within 18 months of enactment, requiring regular reporting to Congress on the status of the speed with which public assistance project worksheets and other contributions are being made for open disaster, requiring FEMA to shift to a cost-estimate model by requiring regulations to be prepared within 6 months of enactment.

The bill also focuses on FEMA's role as a recovery and coordinating agency by formally establishing and preconstituting emergency recovery teams to establish the FEMA's dual role as both a recovery and response agency in the immediate aftermath of a disaster. It also seeks to establish a Federal Interagency Disaster Recovery Task Force with the purpose of ensuring Federal agencies with a role to play in recovery are coordinating before a disaster, and full Federal resources are identified to be activated at the time of a disaster.

Those are some of the provisions that we seek to change in regards to how the Stafford Act regulates FEMA. And I am pleased to report that in November last year that the vast majority of these critical reforms were included in the Disaster Response Recovery and Mitigation Enhancement Act of 2009, which was authored by this Committee's Chairman Mr. James Oberstar, Chairwoman Holmes Norton, Ranking Member Mica, who was with me at Charity Hospital in New Orleans, and Ranking Member Diaz-Balart. The remaining provisions the Chairman and I are working on for

consideration. I have had the chance to review the proposal of the U.S. Conference of Mayors, and I am pleased to report that a number of the recommendations are reflected in my bill.

The success of these provisions is good for the constituents in Louisiana's Second Congressional District because it represents progress and change on how FEMA does business. With this bill we have taken a comprehensive relook at the Stafford Act and the regulations that support it, and we have made it better.

I am grateful for your consideration and collaboration and that of your staff, Madam Chairwoman and Ranking Member. They have been wonderful to us, and they have been very cooperative in trying to establish the changes we need to the Stafford Act. And we are still in the midst of recovery, and we are still many years off due to the extent of Hurricane Katrina's damage to my district. Many of the critical institutions like Charity Hospital and other health care institutions are still not reopened, but we are working towards a revitalization of the area, and through other economic means we hope to once again bring New Orleans back to once it was one of the greatest cities in this country.

So with that I thank you very much for holding this hearing, and I yield back the balance of my time.

Ms. NORTON. Thank you, Mr. Cao.

Ms. NORTON. Actually I will let the mayors decide in what order they want to proceed. You may have your own sequences.

Mr. NAGIN. I will go first, Madam Chair, if that is okay.

Ms. NORTON. Mayor Nagin, please go ahead.

TESTIMONY OF C. RAY NAGIN, MAYOR, CITY OF NEW ORLEANS, LOUISIANA; ROBERT J. DUFFY, MAYOR, CITY OF ROCHESTER, NEW YORK; AND FRANKLIN COWNIE, MAYOR, CITY OF DES MOINES, IOWA

Mr. NAGIN. To Chairwoman Norton, to Ranking Member Diaz-Balart and to my Congressman, Congressman Cao, and all the distinguished Members of the Subcommittee panel and guests. My name is C. Ray Nagin. I am the mayor of the City of New Orleans. I want to, first of all, thank you for this opportunity to speak to you today about reforming the Stafford Act, which as many of you have already said and are aware, is a Federal law that supports preparation for and response to disasters. It gives the President of the United States the power to issue disaster declarations that authorize help for States and local communities overwhelmed by events that have disrupted their normal functioning.

Although it was written to give discretion to Federal administrators for tailoring a response to the need, the flexibility in the Stafford Act is not adequate to handle the widespread destruction caused by the kind of disaster that New Orleans faced from Hurricane Katrina and subsequent flooding--a catastrophic disaster. Response is too often impeded by this limiting piece of legislation, bureaucratic inefficiency, and conflicting or unclear policies and regulations.

In New Orleans we are rebuilding following the devastation of Hurricane Katrina. Although problems with the Stafford Act and its implementation have led to major delays in our recovery, we are now creating a city that is even better than we had before. But the

structure under which we have struggled to recover remains largely unchanged today and will continue to cause significant problems in future disasters.

I want to thank you once again, Congresswoman Norton, for all you have done to support New Orleans since Hurricane Katrina and to help us better prepare the country to respond and recover from disasters. Many of the special one-time fixes that gave New Orleans relief following the 2005 storms very graciously began with this Subcommittee under your leadership, and you have been a leader in initiating positive, permanent changes to the Stafford Act.

I want to also publicly thank President Obama's administration and other key leaders in Congress who have worked to improve disaster response and recovery since the catastrophic events in New Orleans demonstrated the needs so clearly.

You know, one of my goals since this disaster has been to learn from it and to make sure that no other American city ever has to face the difficulties that we had in New Orleans. Because disaster response and recovery is important to every city, the United States Conference of Mayors asked me, along with some other mayors, to put together a task force to formulate some recommendations which you referenced earlier. We are 24 mayors represented on this Committee from 18 different states, and it was unanimously approved by the entire body of the USCM. I have been working with my co-chair, Sacramento Mayor Kevin Johnson, and with participating mayors, emergency managers, and other staffs from cities around the country, and we have outlined a set of comprehensive reforms.

Congresswoman Norton, we are also very appreciative that you introduced H.R. 3377. And if you haven't heard it before, we support this bill; we are just hoping that it will have some of the modifications that we have included in our report.

I want to really cover five key issues, and I will try to do those very briefly. First, the Stafford Act should provide for a catastrophic designation to speed up funding, availability, and recovery. And I know we have had some discussions about the different categories that are already in this act, but we firmly believe that some type of catastrophic designation would be appropriate going forward, and we can talk about how to define that.

One of the thoughts we had was a multi-state designation, if there were an event that happened that affected multi States. Another thing that we talked about is if it had significant impact to the national economy. We think there should be some automatic provisions that kick in in the event of a catastrophic-type event.

One of the other things we found that would help this is that the FEMA organization, in my experience, has been more of a compliance-driven organization. They are into the compliance with the rules, and that tends to slow things down. In a catastrophic event, you need a mission-driven organization that is clear about what they are trying to accomplish over a very short period of time, and we think this designation would help a lot.

Second, the $5 million cap on the Community Disaster Loan Program must be removed. This is an area where we have had a one-time fix, if you will. But keep in mind that during Hurricane Katrina, it was catastrophic, and our economy was completely shut

down. So in October 2006, after a year of lobbying, a full year of lobbying, Congress was very gracious in providing the city and other affected entities with the ability to borrow up to 50 percent of our annual revenue loss, but we had to go through a full year with the act basically saying that the maximum we could get was $5 million.

Thirdly, the law should give grant standing to local jurisdictions that are CDBG Entitlement Communities so that we may deal directly with the Federal Government. I want to clarify something here. We are not talking about the immediate aftermath of the event-- categories A and B. We are talking about once the community starts to clean up debris and get the recovery going. That is when those grants should come directly to the local municipalities.

On my fourth issue, and I have one more, and then I will be finished: the Hazard Mitigation Program must be adequately funded and streamlined. Hazard mitigation is a great concept. It uses probably the toughest dollars there are to spend. There is so many rules and regulations, and then it goes through the States, and they struggle to spend those dollars also. But in the event that happened in New Orleans, New Orleans had about 57, almost 60 percent of the damage, and thus far we have only been allocated about 5 percent of the hazard mitigation dollars that have gone to the State. We have been awarded only $30 million out of the $1.4 billion that was allocated. So we are pushing for direct funding on that.

And then, lastly, there must be an increased support for communities hosting evacuees and the cities that provide direct assistance to disaster-affected communities. These communities should not be penalized for their generosity. They should receive 100 percent reimbursement for personnel costs and lost revenues incurred to help manage and implement assistance for evacuees. Unfortunately, during our experience, that did not happen.

I want to thank you again for your focus on this important issue and for the commitment that you have demonstrated to our city. Despite all the challenges that I just mentioned, New Orleans is rebuilding, and we will be a stronger, smarter and better city than ever before. Over 80 percent of our population is back. Our city is growing at at least a 7-8 percent growth rate per year. Our unemployment is among the lowest in the nation because we have a tremendous amount of construction-related activity going on in our city.

And as I prepare to leave office and not run again for any public office-- Congressman Cao-- I remain as committed as I was just after Katrina to make certain that no other city faces the recovery and rebuilding difficulties that we had in New Orleans. It has been my honor to lead the task force on behalf of the U.S. Conference of Mayors. Our recommendations are based on actual experiences and actual frustrations in working with a structure that must be overhauled to better serve the American people. Reform of the Stafford Act is critically important to the future of our cities, and it must be reformed now.

Thank you very much, Madam Chair.

Ms. NORTON. Well, thank you, Mayor Nagin, for that.

Thank you again for your service. I recognize it probably was the roughest mayoral service.

Mr. NAGIN. Of all time.

Ms. NORTON. Perhaps even all time. And I note your pledge to Mr. Cao to leave him be, at least for you to leave him be. You should note that we did not swear in the witnesses.

Mr. NAGIN. So noted.

Ms. NORTON. Shall we hear from, which of you, Mayor Cownie, who is mayor of the City of Des Moines? Please go on, Mayor Cownie.

Mr. COWNIE. Thank you, Chairwoman Norton, Ranking Member Diaz-Balart and Members of the Subcommittee. I am Frank Cownie, the mayor of Des Moines, Iowa, and I am a member of the U.S. Conference of Mayors Committee on the Stafford Act Reform Task Force, chaired by Mayor Nagin, and also have enjoyed, quite frankly, getting to know Mayor Nagin and watched his work as many of us around this country did during their time of need. I also serve as Chair of the Mayors Metro Economies Committee. I am honored to have the opportunity to speak to you today.

Under Mayor Nagin's leadership and his Vice Chair, Sacramento mayor Kevin Johnson, our task force did really a remarkable job by identifying the various Stafford Act provisions which caused problems for local officials trying to prevent, mitigate and respond to disasters, and of developing recommendations intended to solve some of those problems. Today I would like to touch on our recommendations regarding hazard mitigation and then talk a bit about our experiences in Des Moines relating to flooding, which occurred in June of 2008. And I might also take about 30 seconds to tell you about our experience in 1993.

Hazard mitigation recommendations by our Committee. The hazard mitigation measures have proven to be effective in reducing property damage, cost of repair and replacement, and loss of life. FEMA's Hazard Mitigation Grant Program provides funding to assist communities in implementing long-term hazard mitigation measures as we repair or rebuild following a major disaster.

A congressionally mandated study for FEMA estimated that $4 can be saved for every dollar we invest in mitigation. More funding should be made available for hazard mitigation after a disaster, and communities that are at high risk should have more funding and financial incentives or hazard mitigation programs available to them. Additionally, the entire hazard mitigation grant process should be streamlined so less funding is lost to complex and bureaucratic administration, and more can be spent on the actual construction of safer structures.

Now, quickly I will talk about our experience in Des Moines. In 1993, we had a—I was not in elected office at that time, but had the experience of going through a devastating flood in our city. In 2008, we had a similar experience. Through watching some of the trials of some of our mayors, including Mayor Nagin, we all learned and we knew that preparation certainly was necessary.

And I will tell you that in 2008, the City of Des Moines, we had about 99 percent of the water that we had in 1993, but because of preparation and a lot of the work that we did, we only had 5 percent of the damage in our city. However, I will also tell you at the

same time that 73 of the 99 counties in the State of Iowa in 2008 were declared national disasters and was ranked, some say, in the top four national disasters—natural disasters of all time in this country, right in the middle of the heartland of this country. It is not a coastal situation. This happened as a result of flooding and heavy downpour and, some would say, climate change.

In June of 2008, Des Moines was threatened with serious flooding. We discussed our experience in Des Moines with the task force, and as a result, it was recommended that disaster assistance funds should also be provided to reimburse costs associated with preventative measures. The Stafford Act prevent funds are provided through annual grants to assist with preparation in hardening of structures. Reimbursement should also be provided to jurisdictions that use resources to take urgent preventative measures to mitigate the effects of potential disasters which appear to be imminent threats. These measures, which could include precautionary evacuations and target hardening of facilities or levees, should be covered even if the path of the threatening event changes or the preventative measures successfully mitigate the effects of a disaster.

In our experience in Des Moines, a vast majority of the disaster funds were allocated and administered by the State of Iowa. This resulted in major delays in assisting disaster victims. The State had to set up administrative procedures, hire new staff, set up new tracking systems, and establish methods of communication and reporting.

Certainly cities like the City of Des Moines and Entitlement Cities have capacity; we have engineers; we have past experience of administering Federal grants, whether it be CDBG or HOME or ESG, lots of Federal programs. We know how to do it. We are Entitlement Cities. We get annual funds from the Federal Government. We can help the States get that money out more quickly.

Many administrative rule changes were made and are still being made resulting—and I am just talking about our experience in 2008. There is still more delay and confusion.

While this administration and administrative model may be necessary in rural and unincorporated areas, certainly many of the areas hardest hit are the Entitlement Cities. And we experienced federally funded programs, as I mentioned a minute ago, CDBG and HOME funds. Entitlement Cities, including Des Moines, we already have in place those staffs and accountability and understanding needed to administer those programs. Direct allocation to those Entitlement Cities was done during the floods, 1993. As I mentioned earlier, we had those funds on the ground in 60 days working to mitigate immediately. Obviously we responded immediately, but we had the Federal funds already in motion. We have the capacity.

Because the funds are allocated to the State, localities have had much less control over how the funds are spent in their communities. The State of Iowa set up specific programs and allocated funding based on Federal Emergency Management Agency, FEMA, and Small Business Administration, SBA, assistance received. This allowed little discretion to decide what is most critical at the local level. In Des Moines, for example, dealing with aging infrastruc-

ture is a high priority. Much of our infrastructure is over 150 years old, and we—it is significant prevention in mitigation strategy to work on those pieces of our infrastructure, but limited competitive funds were made available for this activity at the State level.

Direct allocation of disaster recovery funds to Entitlement Cities would allow for expedited assistance to victims and increased local control over priorities without jeopardizing administrative or financial accountability.

We were able to have direct access to know who—actually we were unable to get direct access to know who in our community received FEMA or SBA assistance. This information would be helpful in assessing where to concentrate our outreach, as well as to verify the amount received for the duplication of benefits process that is required under the Stafford Act.

FEMA recipients were unaware of the specific items their funds could be spent on, home repair versus personal property, et cetera, or that they needed to even keep receipts.

The on-line system that FEMA recipients can utilize to get a copy of their FEMA awards is cumbersome, and it is hard to use.

The assessment that FEMA did in order to award funds seemed to be all over the place. We had families awarded as little as $60, when, in fact, they had thousands of dollars' worth of repairs. We understand that FEMA is just the front line, and that more assistance will be available, but many of the families in the Jumpstart—by the way, the Jumpstart was an Iowa program that took CDBG funds and used those—were not. Some took payday and car title loans to pay for those repairs that the FEMA funds did not cover.

We need coordination between FEMA and the U.S. Corps of Engineers in each and every event where both entities exercise jurisdiction. The absence of this coordination is particularly problematic for communities told by FEMA that levee repairs, for example, are not FEMA-reimbursable expenses because they view this as a Corps-reimbursable expense, while the Corps says the expense is Corps-nonreimbursable because they view it as a FEMA-reimbursable expense.

So the response time from FEMA is also slow. The Birdland area, which is one of our areas where we had a breach in the 2008 event, the City of Des Moines was substantially damaged by flooding, and the area was not eligible for property acquisition under HMGP because it is protected by a levee. And since that area did not qualify for that type of assistance, the City of Des Moines was forced to administer a locally funded flood buy-out for damaged properties after those floods. The HMGP program needs to be amended, or a different program needs to be established to include these types of properties as the impact on these properties was as severe as it was to properties eligible under the HMGP.

Grant administration is ineffective and overly time-consuming, and it is often difficult to understand the rules of FEMA involvement in the midst of a disaster, and is often difficult to determine who our cities should use as a FEMA point of contact having authority to represent the Agency during the disaster.

Thank you for the opportunity to testify on the matter, and I will be happy to participate in the question and answer.

Ms. NORTON. Thank you very much, Mayor Cownie.

I want to move quickly then to our final mayor, Mayor Robert J. Duffy, who is the mayor of the City of Rochester. Welcome.

Mr. DUFFY. Thank, you Madam Chair.

Chairwoman Norton, Ranking Member Diaz-Balart, Congressman Cao, Members of the Subcommittee, I am Robert Duffy, mayor of the City of Rochester, New York. I am a member of the U.S. Conference of Mayors Stafford Act Reform Task Force, chaired by Mayor Nagin, and also serve as a Chair of the organization's Criminal and Social Justice Committee, which has policy jurisdiction over the issues we are discussing today. I am honored to have the opportunity to appear before you this afternoon and ask that you include my full statement in the record, and I thank you for this chance.

Before I focus on addressing disasters in cities, I want to thank the Committee on Transportation and Infrastructure and its leaders for their efforts to address the many complex transportation and infrastructure challenges before our Nation. We recognize that the next surface transportation bill presents an opportunity for renewed commitment to investing in cities and metropolitan areas, and we recognize that challenges will be encountered along the way. Please know that mayors stand with Members of this Committee who are committed to sustainable transportation policies that reinvest in our Nation's cities and metropolitan areas, the areas in which 84 percent of our people live, and more than 90 percent of our future economic growth will occur.

We all owe a debt of gratitude to Mayor Nagin for the outstanding job he has done as the Chair of our task force, and also to Sacramento mayor Kevin Johnson, the task force's Vice Chair, for the great assistance that he provided. Mayor Nagin has experienced something that I hope no other mayors will ever have to experience in their careers. We all appreciate his willingness to chair our Stafford Act Reform Task Force and to lead our efforts to identify needed reforms in Federal disaster assistance.

In January, the Conference of Mayors adopted a policy resolution which incorporates the recommendations of the Stafford Act Reform Task Force. This means that recommendations included in the task force report represent the official policy of the U.S. Conference of Mayors. Today I would like to cover several of these recommendations.

Under disaster assistance programs, many programs created by the Stafford Act have limitations set by law, regulation or policy that have caused problems and delays in recovery of impacted communities. The requirement for grant programs to be run through the States instead of directly with cities adds an additional layer of bureaucracy and delay. Another serious impediment is the limitation on the use of grant funds to pay regular as well as overtime hours for work performed by the staff of affected jurisdictions following an event.

We all believe that disaster grant programs, including Hazard Mitigation, should be changed to give grant standing to local jurisdictions that are Community Development Block Grant Entitlement Communities so that they may deal directly with the Federal Government.

Further, assistance programs should be changed to cover both regular and overtime pay for the work performed by State and local public employees, such as first responders, building inspectors, health care professionals and sanitation workers, following a disaster.

Under individual and household assistance, the Stafford Act should be changed to increase funding for and improve administration of programs to meet the needs of individuals and communities experiencing disasters, as well as the host communities providing assistance. Stafford law and regulation have authorized many programs to assist people affected by emergencies and disasters, but current funding for the program is insufficient to meet the need, and the implementation of the programs themselves needs improvement. The existing deficiencies hurt both disaster victims and the communities that host those who are evacuated.

This is a particularly acute problem in catastrophic disasters in which significant time passes before evacuees can move back to their communities. For all disasters, thorough case management handled by qualified professionals as opposed to inadequately trained temporary workers is essential to the success of Individual Assistance and other programs that offer help to victims. Further, changes in law and regulation are needed to ensure that host communities are made whole after providing shelter and resources for the victims.

Under FEMA administration, there is a final recommendation I will cover that could go a long way to improving administration of our disaster programs. The Stafford Act and related laws and amendments should be consolidated into one code to reduce variable and conflicting interpretations and to provide clear guidance for FEMA and communities that are working to apply disaster policy, regulation and law in preparedness, response, mitigation and recovery.

With the situation that we experienced in Rochester, in our City of Rochester and our surrounding Monroe County, we have had numerous disasters over the years that required Federal assistance. These include the ice storm of 2003-- I am sure is hard to imagine ice and snow in upstate New York-- which required $16 million in Individual Assistance, $9.2 million of public assistance and $76,000 in mitigation funding. While this event did not garner nearly as much national attention as other disasters that have occurred in other areas of our country, it is a reminder that all disasters have the potential to create a tremendous amount of suffering and financial hardship in the communities in which they strike. The $16 million in Individual Assistance, for instance, aided no less than 6,400 households that were in some way affected by that storm, based on the fact that FEMA awards no more than $2,500 to each affected household.

Clearly many lives are disrupted by disasters. This is true for all cities in metropolitan areas, those which are at particular risk of disaster because of their geographic location or other factors, and those whose risk of disaster seems to stay below the national radar. For this reason we are all obliged to do everything possible to be ready if disaster strikes. I feel as strongly as my colleagues who have experienced major disasters that the Stafford Act must be re-

formed. I feel just as strongly that our recommendations can help to guide that reform.

I want to thank you for this opportunity to testify on this very important topic. We look forward to working with you and this Committee on the needed improvements for the Stafford Act, and we are also very happy to take your questions. Thank you.

Ms. NORTON. Thank you very much, Mayor Duffy.

Ms. NORTON. Let me start off the questions in this way. I am particularly interested in this notion that you have raised and a number of others have raised about an additional designation. You and others have called it the "catastrophic designation". I think this was authored by New Orleans, as a matter of fact, without intending to, that there are disasters and then there are megadisasters.

Now, you point out as well, I think you did, Mayor Nagin, it is very hard to get into matters of definition. Everybody thinks the world is falling apart on his watch, and they want the highest and best designation they can find.

I can tell you, all three of you, that certainly for the first time that I can remember, and I was born and raised in the District of Columbia, a Presidential major declaration, a disaster declaration, has been issued just today for the District of Columbia, already for counties in Maryland and Virginia, because we had what you, Mr. Duffy, would perhaps regard as light snowfall here, but for us it was quite major. And perhaps the best evidence of that is it not only shut down the schools—they shut in a moment's notice if there is a few drops, sometimes even raindrops—but it shut down every regional government, it shut down the Federal Government for almost a week, it shut down our subways. So I had no doubt that we would get a major disaster declaration. I talked to FEMA all during it. Of course, the Executive had to request it. So I began to personalize this and to identify entirely with you.

Now, we have a provision in this bill that I have repeatedly cited in my opening remarks, 3377, and we call it special procedures. And that would occur when a President determines that there are—and we use these words in the statute—extensive and widespread damage. Do you believe that H.R. 3377 covers essentially what you are talking about and would provide the assistance you would need in what you call a catastrophic disaster?

Mr. NAGIN. Madam Chairwoman, I think that the bill you reference definitely gets us much closer than we have ever been. Our argument has been for an event that is so devastating that it would either totally shut down the area for an extended period of time, or the population would have to be totally evacuated, or it would impact a multi-state region, or it would have a significant impact on slowing down—a significant impact in the Nation's economy. Now, that is very difficult to——

Ms. NORTON. That is interesting. You have just almost written some regulation for that. You said the Nation's economy. And, of course, that happened in New Orleans.

Do the rest of you think that the Nation's economy should be implicated in order to get this?

Mr. NAGIN. This would be something that would be very infrequent and unique, and something that wouldn't happen often, but

if it did happen—for example, we are watching these earthquakes in Haiti and now in Chile, and we know that some areas of the United States sit on major fault lines that haven't had an event in quite some time. I mean, I wouldn't want to wish this on anybody, but in the event that something happened like that in the United States, and you had to evacuate a million people or something like that, then you would have these designations to kick in.

And if I could be very frank, Madam Chairman, giving the President's authority and using the existing FEMA regulations is fine if you have your politics fairly lined up. The experience in New Orleans is that we had conflicting political agendas. And there is something in the Federal regulations that talks to posse comitatus, and we ran into that during Hurricane Katrina where there was a Governor who is of one party and did not invite the President of another party in to allow troops to come in and do what they had to do. Then we were kind of stuck in this no-man's land.

I hope that has been subsequently fixed. I hear there was something that was done after Katrina. But those types of instances should automatically trigger special provisions.

Ms. NORTON. Mayor Nagin, I am going to go to either Mr. Diaz-Balart or Mr. Cao—they can decide which—next, because for reasons having to do with a pending bill to give residents of the District of Columbia full voting rights, I can vote on some measures, but not on most on the House floor. So we are going to have to decide about how to proceed on questioning.

But I am going to allow the other Members to proceed, and let me tell you why. Because, Mr. Cao, Resolution No. 2 on the floor—you will be pleased to hear this resolution, Mayor Nagin—congratulating the National Football League champion New Orleans Saints for winning the Super Bowl and for bringing New Orleans its first Lombardi trophy in franchise history. And I understand that you, Mr. Cao, have introduced this bill, so maybe Mr. Diaz-Balart will let you go first, if the gentleman who is the Ranking Member would allow that courtesy.

Go ahead, sir.

Mr. CAO. Thank you very much, Madam Chair. And then since it is my bill, I better be there and vote for it.

But, Mr. Mayor, Mayor Duffy and Mayor Cownie, first of all, thank you very much for being here.

My first question is focused on the CDL. In the proposal that you all drafted, you proposed that CDL loan forgiveness, at least the $5 million cap be removed, and that the amount available for loan funds should match the amount of revenue lost. Can you explain to me how is it different from how CDL is being conducted right now, and how do you see that as an improvement over what we presently have?

Mr. NAGIN. Well, the CDL requirement in the current act caps the loan amount at $5 million, period. We came in and got two subsequent amendments or one-time exemptions for the New Orleans experience. I think it was in October of 2005 we got it raised to 25 percent of the revenues that we lost, and then a full year later that was bumped up to 50 percent. Am I answering your question? That was a one-time change.

Mr. CAO. But based on the amount of loans that you received under the present regulations, are they adequate in order to cover the amount of revenue loss that you suffered?

Mr. NAGIN. We made it work at 50 percent of the annual revenues that we lost. But what I am saying is that going forward, if we had another Katrina event, we would start again at the $5 million cap.

Mr. CAO. Now, as you are fully aware, subsequently after Katrina the recovery process was somewhat uncoordinated. We have Federal agencies, we have State, we have city in which the whole recovery process was—at least from the perspective of the average citizen did not go—the process was not carried out in a concerted effort. We are looking at ways to propose that there should be a coordinating agency. We have the office of the Federal coordinator, but she did not have the power to do much of anything.

Based on your experience, Mr. Mayor, how can we revise the Stafford Act in order to allow a better coordination of the recovery process, coordinating between the Federal agencies with the State and with the city, and who should be the point person?

Mr. NAGIN. Wow, that is a big question. They tried to set up a recovery czar, but that person had to go negotiate with each Secretary to get things done, and the priorities just weren't synced up, so it never moved quickly.

If you are going have someone who is going to coordinate everything, then that person should have responsibility for the key things that you need during a recovery. Let me just hit quickly on housing, for example. In my humble opinion, I think that HUD should be the agency that steps in at some point in time. Once a disaster has been stabilized, FEMA should move to the side, and HUD should be responsible for providing whatever temporary and long-term housing that that particular community needs, because that is basically what they do on a day-to-day basis. FEMA at some point just continued to be in the compliance mode, and everything ground down to a very slow pace.

Whether there is somebody who can manage every aspect of a recovery, I am not sure. The closest you probably have to that today is probably the Secretary of Homeland Security, but then HUD is not part of that.

Mr. CAO. Mayor Cownie, based on your experience with, is it Des Moines, do you see adequate coordination between the different Federal agencies with your State, with your city to recovery? And if you were to recommend a better coordination with respect to recovery, what would you recommend?

Mr. COWNIE. Again, that is a—I don't know how many hours we have to discuss that, but there needs to be a person who is in charge. We had Corps of Engineers, we had FEMA, we had HUD, we had all kinds of Federal agencies, and different programs were in place, and, of course, you couldn't have duplication of payments on anything, and trying to get anybody to make a final decision was very hard. And I think that if your question was how would we do that, I think, as Mayor Nagin said, if there was a central place of control, and they coordinated all of the agencies together much as we do in the cities—I mean, I know what my housing de-

partment is doing, I know what the police are doing, I know what fire is doing, I know what public works is doing, and we manage our resources. And if we had some way to make that happen with Federal agencies as well, I think it would coordinate and expedite not only the movement of funds in the help to people, but it would make better use of funds in Federal dollars and certainly, as I say, move it across.

Here we are sitting in 2010, and I will tell you that right here sitting in Washington, D.C., we have got 4 foot of snow sitting on the ground north of us and 2 foot on the ground in Des Moines, and with just a regular rainfall, we could be looking at a situation much worse.

Mr. COWNIE. If we have 2008-type rainfalls come in the next 60, 90 days, we need to start coordinating right now.

So I just think that maybe sort of a pre-coordination between all those folks to decide how we are going to start thinking about it, what our mitigation plans are. Certainly we have experience in doing that. We were successful in 2008, but I think coordinating not only all Federal agencies but working with all other levels of government, State and local, city, county governments, and coordinating all those efforts would really be helpful to the people, which at the end of the day that is who we all serve.

Mr. CAO. Do you propose that the mayors themselves be the coordinating entity, since you are the ones who know your city inside out? Or do you propose the State or a Federal agency to do the coordinating?

Mr. COWNIE. Again, using our 1993 experience, we had funds come directly to us through CDBG and other programs that we were directly funded for. We had that money out the door and in the projects almost immediately, 60 days after the event.

Unfortunately, in Iowa, as I mentioned earlier, the State had to set up all kinds of a new bureaucracy and put people in place to manage it; and in February of 2009 they were still trying to figure out the rules and the regulations and roll dollars out and help people.

In the city of Des Moines, we used our own funds to go ahead and do that. There are other cities in the State of Iowa that still have caibo sitting on the streets almost 2 years later.

Mr. CAO. Thank you very much. I yield back.

Ms. NORTON. Mr. Diaz-Balart, before you go, do you have any questions for any of mayors?

Mr. DIAZ-BALART. Not at this time, Madam Chairwoman, thank you.

Ms. NORTON. Thank you very much.

Let me then proceed with questions for each of you.

Mr. Duffy, I think you were not the only one of the mayors, Mayor Cownie, I think, also testified about increasing the Hazard Mitigation Grant Program. This is a favorite of the Subcommittee.

When you speak about floods, the first thing that occurred to me was I hope there has been a lot of hazard mitigation. You think about the kind of snow you have to melt. The only difference between you and us is you presume to have the equipment to try to remove some of it, but that doesn't take care of all the flooding that is expected.

Could I have this map? The flooding, because the colors are vivid, perhaps you can see, everything in pink and red is expected to go through flooding this year. The only dry spot is over in the west, for some reason. So we take very seriously what you are saying, Mayor Cownie and Mayor Duffy.

First, we do have hazard—we have indeed focused on hazard mitigation rather considerably. It is our own H.R. 3377, which—if I might go to building codes—which we have included in that provision.

Now, I mentioned in my opening statement Chile and Haiti. Now Chile had a worse earthquake and what appears to be less damage, less physical damage. I hope everybody is paying attention to Chile and Haiti, because that is the kind of two cases—look at them and think about, yes, there are parts of the United States on a fault line or, for that matter, where similar problems could occur. Because people just think it won't happen to them.

So we have included building codes. Now do you believe these changes? I don't have any idea of the extent to which building codes are in fact. You are mayors. I don't know if you find it mostly in cities and not in rural areas. Why do you think they are so important? Do you think they are important largely for cities and other jurisdictions on fault lines?

You go so far—I think it is Mayor Duffy—to say that the cost of building code and permitting officials should be part of FEMA's public assistance program. So I wish you would explain how you see building codes fitting into the Stafford Act and where you see them as most useful.

Mr. DUFFY. Thank you, Madam Chair.

I would like just to comment briefly in terms of building codes. Our city and really the State of New York has very strict codes which are often——

Ms. NORTON. Is that a State code.

Mr. DUFFY. The State has a code. We have a very strict code in the city of Rochester, but the State also has a very stringent coding system. Those who are building homes and developers often find them very difficult to get through because of some of the restrictions. I think——

Ms. NORTON. The State restrictions or city restrictions?

Mr. DUFFY. For us, it is the city, our city restrictions.

But the one thing, as you just mentioned, the part of the building code process which is so important is that, first of all, we are ensuring that buildings when they are built can sustain damage and certain catastrophes. They also are built to code for fire, fire protection. So some of the things we have seen in Haiti and Chile—and it is more in Haiti than in Chile—reinforces the need for that code system.

And if there is a disaster—and no one can speak like Mayor Nagin about this—but I believe building inspectors, when they go out in the midst of a disaster, have to be on the front line with our first responders. I think they are a critical component to the assessment and rebuilding of areas that are hit very hard by disasters.

Mr. COWNIE. If I might also—and I am sure Mayor Nagin has a similar appearance—but when we were going into areas that had

been devastated and had homes under water, the first people in there were the building code people. They had to see and, first of all, give us some estimate of the level of damage that each of those structures had sustained; secondly, whether or not they could be repaired or were inhabitable; and, if not, what needed to happen to either secure them or move straight to demolition.

Now often that happened way before we ever saw any Federal funds or even a hint of them. As soon as the water went down, we were in there. And I think that those are the kinds of things that we need to know, is sort of a first, initial valuation; and those are the kinds of things that you want to know as well. And we think that at least in part those, if not in whole, those should be covered expenses either by grant or loan.

Ms. NORTON. Do the three of you think H.R. 3377 covers your concerns?

Mr. NAGIN. I think it does, Madam Chair.

The one other thing we would ask is that, as it relates to hazard mitigation, there is a requirement for us to, if we tear down a building in a residential area, that you have to turn it into green space. And in an urban environment we don't think that is very smart use of land in a city. So we think there needs to be some modification to that. There is a pilot that we have been working with to basically tear down and rebuild something similar in that same space.

Ms. NORTON. Well, that sounded strange to me. Yes, they don't want people to rebuild in the floodplains, so the alternative to green space would be building in such a way that you don't go down again in the flood. I could see if you are in the middle of town you may need that space.

Mr. NAGIN. Yes, sometimes you have in the middle of cities some areas for one reason or another that may be subject to repetitive flooding. You can build there. You just have to build higher.

Ms. NORTON. Well, you would want that. You wouldn't want it to go under.

Mr. NAGIN. Absolutely. You want to build higher and smarter. But if you use hazard mitigation money and you do demolition on that spot, then it is required to be green space.

Ms. NORTON. Mayor Duffy.

Mr. DUFFY. Madam Chair, just to reinforce what Mayor Nagin said, Rochester is situated on a great lake, a river, and a canal; and a large portion of our area from our center city on out is located in Federal floodplains. I would agree with Mayor Nagin that while there have to be decisions made in terms of the rebuild after a catastrophe—and we have had serious flooding going back two or three decades ago—they should be made at the discretion of the local government. Green space may be applicable, but this may not be reasonable or appropriate.

Mr. COWNIE. Madam Chairman, I also would like to just reinforce what my fellow mayors have said, but I will tell you in most of the large cities in the State of Iowa and probably in most of the States that have rivers and are on the coast, we are all subject to some level of flooding.

We, the city of Des Moines, sits at the confluence of two rivers, and it was put there for a reason, originally for transportation, but

we are protected with levees. The problem is sometimes you get a certain amount of rain with the levee; and if the river is high enough you have some other issues on how to get the water into the river and so you have sewer backups, have different kinds of flooding. And so we have to be cognizant of that, at least in the State of Iowa.

I would say the 10 largest cities all sit on rivers and a certain portion of them are subject to different types of flooding. The city of Des Moines has been successful in mitigating many of those problems, but there may be a circumstance that we haven't foreseen that would cause that to happen yet again.

Ms. NORTON. I am a lawyer, so I wanted to see these words. Again, I live in a city, and I can imagine this process, this happening.

Now it does say any property acquired, accepted or from which its structures would be removed to protect will be dedicated and maintained in perpetuity for use that is compatible with open space, recreational, and wetland management practices. It looks like it was built for some rural areas or something.

Now the technical notion is that, yes, you can use it if you are going to take existing structure and elevate it in some way, but if you are going to buy it out altogether, then you can't use these funds. You can do it, but not mitigation funds, not using these funds.

I think we really are going to have to look at the experience of cities and what we are talking about here.

Mr. NAGIN. Madam Chair, I can just give you some very specific examples in New Orleans. There are some areas of our city where we are building and we are elevating the residence where the bottom floor, the first floor, is strictly for parking; and we are building apartments that way, also. Which, if you use hazard mitigations in a creative way, you can facilitate more of that in cities; and that is what we are saying now.

Ms. NORTON. So you don't want to elevate it because you don't mind the cars getting flooded?

Mr. NAGIN. We don't mind the cars getting flooded. That is okay. We can deal with that. But, right now, if we are in an area that we know floods and we use hazard mitigation money, then that space is gone. You can't build something like I just described.

Ms. NORTON. Well, this hearing is about cities; and I am making sure that the Stafford Act conforms to the needs of cities in particular.

Mayor Duffy.

Mr. DUFFY. Madam Chair, just to go back to a comment— a question asked a minute ago-- perhaps in its consideration this body should look at some flexibility with the legislation that would give the mayors or county executives or executives of local areas flexibility, but with justification and accountability.

So if cities made decisions—say Mayor Nagin made decisions that may controvert some of the language-- I think if Mayor Nagin could justify why he is making those decisions, there should be flexibility-- philosophically as in block grants-- in which mayors are given flexibility about how to spend funds, but should be held accountable for those expenditures.

Ms. NORTON. I hear you; and, of course, I am sympathetic to what you are saying. We know that the word ″flexibility″, like other words we spoke of earlier, needs definition. But also, where the cities are very different city to city, I don't like that kind of language in law. When you write a statute, the best way to write a statute is very broadly and to require the administrative agency to issue regulations based on experience. This is the old common law experience that you learn from experience.

So I immediately—when you have something in law that says something like that and it must revert to green space, and then I think about the United States of America, you know, it was all green space until we messed the whole thing up. So we ought to be a little more humble when we put words into language.

I think we have got to look at this, but we have also got to—if we were making changes, we would have to have FEMA come back to us with cases in point.

You see, part of the reason we are having this hearing and why your testimony is so valuable is we really are trying—as you can see from 3377—to conform the Stafford Act to places that the Framers perhaps did not envision.

And the cities have become central to every jurisdiction, every area—excuse me—in the United States. So even when people move out of the city, the city still is the focus, it still the capitol. When Haiti went down, the capitol went down; the whole city went down.

So we have found, frankly—and I don't need to tell you this—when you gave FEMA flexibility it runs from its own flexibility. We have had to beat them about the head and shoulders just to get them to do what the statute says.

But we have got a new administrator who has on-the-ground experience. This is something we certainly will try out on them. Still hasn't been to the floor yet, so we still have some opportunity to work on it.

We don't want your—we are glad that you have come before the matter is completely resolved. We see the difficulties, but we also see the problem of simply going ahead and ignoring what the experience has been.

I am very interested in experience like the experience you offered, Mayor Nagin. To put that example to someone, you can't rebuild in a floodplain. That is kind of doing the same thing over again and asking the government to pay for it. And the question becomes, obviously, the government is not going to pay if this happens. You have got to carry flood insurance there.

So first thing I think is, well, what do I care? If the city wants to build that way and it wants to have people understand that if they park their cars on the lower level it is up to them, don't come to the city.

Notice, though, what FEMA—I am just giving you an example—would say. Okay, so it weakens the entire framework because you have elevated it. Well, you ought to elevate or require that it be elevated so it doesn't weaken anything.

But hypotheticals help me to understand that flexibility is indeed relevant or beneficial. So I would ask you that within, I would say, 14 days to get us any examples that you could of how flexibility might be useful in cities where people live in congested—more con-

gested than they do in rural areas and where the city has limits so there is nowhere to go outside of there. You can't just say we are going to take part of the county to make up for the space that is gone.

I was very concerned—I think it was you, Mayor Nagin, that talked about hazard mitigation funds and huge—well, relatively huge amounts, all of it small, but tiny amounts making its way to the cities. You have to make me understand. Would you say the figures again and then try to march us through how you could get so little money after the amounts had been granted to the States?

Mr. NAGIN. Our experience has been I think for any catastrophe or any disaster that happens based upon the value of the damage I think it is 3 percent—or I may have my percentages wrong—of that damage amount goes into a hazard mitigation fund. It is administered through the States. There is significant amount of regulation and bureaucracy. It is probably the most difficult money we have to spend.

The thing that was alarming to me is that we had 57 percent of the total damage in the State, throughout the entire State. So that means a significant portion of that 1.4, $1.5 billion should have come to my city, but, thus far, today, four and a half years after Hurricane Katrina, we have only been allocated about $30 million.

Ms. NORTON. Has more money gone to more parts of the State?

Mr. NAGIN. It is just stuck.

Ms. NORTON. So that is what I am interested in. What sticks it? What keeps it from coming forward? If you got 30,000 out of how much?

Mr. NAGIN. Thirty million out of 1.4, $1.5 billion.

Ms. NORTON. And you believe you qualify for more than that?

Mr. NAGIN. Fifty-seven percent, we had 57 percent the overall damages in the State.

Ms. NORTON. That doesn't mean you would automatically qualify in the statute, does it.

Mr. NAGIN. No, but I think we can qualify for a higher amount than 5 percent.

Ms. NORTON. We will ask the next panel how they could explain that small percentage being allocated in light of the catastrophe.

Mr. NAGIN. My impression is that the States, this is hard money to spend, so they try and deal with CDBG first.

Ms. NORTON. Hard money to spend because?

Mr. NAGIN. Because of the regulations, the rules. You have to do environmentals. You have these rules about green space. It is just very difficult money for them to get out the door. And there is no real requirement about how they spend the money. So instead of it being formula based for the most devastated areas in the city, it is almost an arbitrary process.

Ms. NORTON. I am interested that you indicate—I think it is you—it may be Mayor Cownie indicates that the program should be in proportion to the damage. Are you talking about some kind of specific formula? Some would argue if you move that flexibility that the funds might not go to the areas in greatest need of mitigation. Do you have any thoughts, further thoughts about that?

Mr. NAGIN. We have advocated—I will turn it over to Mayor Cownie-- but we have advocated for some sort of formula. There

may be a range in that formula, but it should be based upon repetitive flooding, repetitive damage, overall damage that happened in that particular State.

Ms. NORTON. Mayor Cownie.

Mr. COWNIE. I would agree with Mayor Nagin. I think that because of the size of these larger cities in places—Mayor Nagin speaks of 57 percent of all the damage that happened in the State. Among other things, that is because he has the most value in his city of most any other place in the State.

The State of Iowa, our metropolitan area is about 27, 28 percent of the GDP, the employment, the jobs, the buildings, especially the larger ones. And, again, we sit in areas that are densely populated. So when we see something happen, it happens with infrastructure. We make much better use of our infrastructure.

I want to quickly also point out that, for Mayor Duffy and I, our situation is a little different. We don't sit on a coastal area. And part of the problem that happens to us is exacerbated by policy that is set out in other parts of the State. The cities north of the city of Des Moines didn't much care about containment and capture and control release of flood stuff, because it all came downstream. But when the cities and little suburbs north of some of our suburbs started happening and they started flooding, they started becoming very aware that there ought to be some sort of policy that governed this.

Some of the things that have happened over time exacerbate our situations. Pre-settlement times, the State of Iowa, 85 percent of the water that fell on a piece of ground was absorbed right there on that piece of ground. Now it is 15 percent. We do other things with the ground today. They are hard surfaced. It doesn't necessarily say that there is an increased amount of water, but certainly the velocity of the water coming off of that watershed is much more today than it was 50 or 100 years ago because of the hard surfacing and the gray infrastructure that has been put in place. So it causes us to have to handle our situations in the more densely populated areas a little differently than we did 20, 30, 50, 100 years ago.

Ms. NORTON. Of course, the State is looking at, among other things, what is the most cost-effective projects; and this becomes very difficult, particularly if the amounts are totally out of whack for where the damage is.

I don't want to hold you much longer. I do want to ask you about this straight time for State and local employees. Because FEMA is supposed to do only for things above what a State would be doing anyway, so the regulations do not pay for other than overtime. Can you explain why you want FEMA to adopt a policy of paying for straight time for employees?

We are talking about they are working to help with the disaster, and the way in which this difficulty comes is that straight time is part of the regular budget, and most people would be on the ground anyway, and all we are supposed to be is supplementing the local efforts.

Mr. NAGIN. The argument that we are making is that after a major disaster that you have a significant amount of individuals in

the organization who, basically, their full-time job becomes to deal with the disaster. All of our inspectors for——

Ms. NORTON. But they are working 8 hours on doing what they were doing. It just happens they are doing other kinds of things because they have a disaster on their hands.

Mr. NAGIN. Not for us. I mean, our norm turned into disaster management. It just wasn't—the things we dealt with before the storm just went away. So we are having to supplement the straight time with a significant amount of overtime, trying to catch up with all the requirements of assessing the damages.

Ms. NORTON. I see the distinction you make. I think FEMA should take a look at its regulations in light of the existing experience. It is true that if you were, let's say, collecting garbage, you are not collecting garbage anymore if you are in New Orleans.

Mr. NAGIN. Debris.

Ms. NORTON. Yeah, debris or worse. That is something you have never done before. And I can see you would not be collecting anything, but you may need every man and woman on the ground to be doing something.

Mr. NAGIN. And there should be a sunset. There is a period of time——

Ms. NORTON. Sunset for?

Mr. NAGIN. For the straight-time question. At some point in time after the disaster you should go back to the city's normally paying for what that function was.

Ms. NORTON. Of course. You have to have, as we do with most of these so-called benefits.

I have got to ask you about an experience we had. I nearly blew my gasket at a hearing involving New Orleans. I don't think you were here, Mayor Nagin, but we learned there was over $3 billion lying on the table, including dollars for Charity Hospital, that hadn't been spent. And why—so, in true cross-examination—I couldn't stand it. Because we were about to do the stimulus bill. And so I tried to get at how in the world could this happen.

And what we found out was something very, very disturbing; and I was particularly disturbed with FEMA. What it was was simply a stalemate. Each side did what each side is supposed to do. Each side—the State side asked for the most amount it could find, and the government is supposed to keep you from getting the most money you can find. So we delved to see what can we do about that.

One thing I am looking closely at is the notion of each side having an expert. How ridiculous. Once you say you are going to get a divorce, you get an attorney, and you get an attorney, you know what you have set up. And so what we have is consensual divorce now, because we finally have some common sense.

Now somebody—after these two experts, both of whom are qualified, get together, somebody still is going to have a decision to make. It is so irrational that one of the things I am looking at is why shouldn't we have the parties agree on a single expert? Just require—okay, we will go through a number of experts until you agree that is the expert.

But we are already doing something in New Orleans that this Subcommittee altered. First, my good friend from Louisiana, Sen-

ator Landrieu came with a nuclear bomb. Her nuclear bomb was she was so put out that this money wasn't being spent that she was going to have the President appoint arbitrators. We said, well, that is going to take some time. We came to the notion of arbitration, but we used administrative law judges.

Now we have in place and we are going to have a hearing at the 6-month period to see how this arbitration has worked out, rather than have each side go ping pong until the money gets left on the table more and more.

Mayor Nagin, now I understand there already is an award for Charity Hospital. So I would just like to have first your on-the-ground review. Because you are undergoing it now. We may spread it. And then the opinion of the other mayors about, one, having one expert they both agree on and, two, going to arbitration when there is a stalemate early in the process, rather than going back and forth until you finally whip out an agreement as if you were plaintiff and defense attorneys.

Mayor Nagin first.

Mr. NAGIN. Madam Chairwoman, I think that is a brilliant idea. We have gone back and forth with FEMA particularly on estimating exactly how much it is going to cost to fix a public facility. They have their expert, and we hire our expert. We present our findings, and they still don't agree with us, and we were stuck until you had this arbitration process that was put in place recently-- now things are suddenly starting to move. And I think we had a huge case that was settled with Charity Hospital that is now going to allow us to really build a medical district that we have been needing for a long time.

The only other thing I would add, Madam Chairwoman, is that the Office—OMB needs to be brought in the loop on this.

Ms. NORTON. Who?

Mr. NAGIN. OMB.

Ms. NORTON. Oh, they are an extra government agency.

Mr. NAGIN. I am just bringing it up to this Committee's attention. Because now they have had the settlement with Charity Hospital, I think it is about 400 or $450 million, they are now claiming they have run out of money and that their funds are exhausted. So now every project that we had pending is now on hold. We can't get any more PWs versioned up. So we have a good process, but I think somebody needs to be doing a cash flow analysis to make sure there is enough DRF funds as the arbitration settlements come down that we don't stop recoveries.

Ms. NORTON. Mayor Nagin, yes, the Disaster Relief Fund is running out of more money. I understand the President of the United States has put a billion and a half in there. Much of it will go to your school district and to Charity Hospital.

Mr. NAGIN. Okay.

Ms. NORTON. What do the other two mayors think about this arbitration process and one agreed-upon expert rather than dueling experts? You have experienced a major disaster where this was a major consequence, but surely you have experience where you go up against one another and the government is trying to low ball you and you are trying to do something else, shall we say.

Mr. COWNIE. Madam Chair, I think that for us in Iowa and mayors across the country, and especially those of us in entitlement cities, it would be very helpful if there was one authority that would move it forward and make a decision and not create a lawsuit out of it, to come to a resolution to decide how much should be spent or who is going to spend or what are the limits of the spending or what is allowable and what is not. And I bring my guy in, and you bring your guy in, and then we have a third party that is going to listen to all the arguments. And 6 months later we are still arguing, and we still can't believe, and we are appealing, and we are doing whatever we can do.

I think the interest of all of us is to help our citizens and do it as expeditiously as possible.

I would tell you that—back to one of my original points—I think the rest of us, we have capacity in certain cities of certain size to be able to understand Federal programs and move money out immediately. And we are more than willing and able and have worked with all levels of Federal Government, and they insert other levels of government between those that have the capacity to carry out right projects immediately.

It really exacerbates the ability of the State government to make them be the funnel and then have to put it back to agencies that already understand how to make programs work. So I would go back to that.

I agree with you wholeheartedly. Probably one expert that we all agree on to settle it would be much better than moving into arbitration or litigation over some of these issues when there are people out there who need help, infrastructure that needs fixing today, not next year or 2 years from now or 5 years from now.

Mr. DUFFY. Madam Chair, if I could add briefly, I also agree with your recommendation to streamline the decision-making process with an arbitrator. I think that the more you could do, that would be effective.

If I could go back to something I think Congressman Cao asked Mayor Nagin earlier about which agency do you think should be in charge. Whichever agency the government decides. It is really up to you to make that decision. I think, philosophically, it is streamlining the process, making the process happen where somebody is in charge making decisions and can make that happen. And, according to your point, to appoint one person and not spend weeks or months going back and forth would be a much more effective use of time and certainly would free up the blocked funds so that they can go down to where they are needed.

Ms. NORTON. Well, you know, when it comes to the coordination—and I know he had a question—that is one thing with people going back and forward on who is in charge. We have had great problems. We think FEMA is in charge. FEMA is on the ground. It shouldn't have anybody from Homeland Security trying to tell them what to do. They shouldn't have people from Washington trying to tell them what to do. It is hard enough to know what to do when you are on the ground.

With respect to the nitty-gritty though, when you know that there is some money and that the government is in for some money, as I understand your testimony, you do believe that the

States and the cities could in fact get together, at least agree on experts so you won't have dueling experts.

And if Mayor Nagin's—the use of arbitration process, after a certain period of time in which people would have tried to work it out themselves, the early use of an arbitration process with administrative law judges would be satisfactory to all of you.

Mr. NAGIN. Yes, ma'am.

Ms. NORTON. Thank you very much.

Now I do have a special announcement to make. The House has just voted 37 to 1 with—and I am taking names. We are looking to find out who that was. I understand he was not of my party, Mr. Diaz-Balart—and 3 present to congratulate the National Football League champions, the New Orleans Saints, on their recent victory. I believe I know who that one must be. There are sore losers in this House.

Mr. DIAZ-BALART. Madam Chairwoman, we tend to agree on a lot of things, and we agree here as well.

Ms. NORTON. So, with that, I release my troika of mayors who delivered such beneficial testimony. Unless Mr. Diaz-Balart has some additional questions of his own.

Mr. DIAZ-BALART. Thank you, Madam Chairwoman. Actually, if that is all right with you, I would like to have just one question, and I will ask that also of the second panel.

Mayor, the task force—and it is really to either one of you. Mayor Nagin probably has, unfortunately, more experience than others on this. The task force recommended to permanently adopt the Demolish/Rebuild Pilot Program developed after Katrina and Rita. And I mentioned a little bit of that in my opening statement. A lot of times it is more cost effective to rebuild, to maximize mitigation against multiple hazards, as opposed to just lifting a building that is going to have other issues.

Can you talk a little bit about your experience with this Demolish/Rebuild Program and if you believe it should be an eligible activity under HMGP? Is that something you think works?

Mr. NAGIN. Well, we wholeheartedly support it. We touched on it a little bit earlier. But for an urban environment there are sections in the city that for one reason or another may repetitively flood or may have an issue; and we firmly believe that you can build smarter, you can build higher.

I gave a couple of examples where Brad Pitt is doing a project in the Lower Ninth Ward for example; and every house that is being built in the Lower Ninth Ward now is being built in an elevated fashion, where parking is on the first level but the living space is above. So if there is another catastrophic event, God forbid, the flooding will be minor, and all you will lose is a car, but you pretty much will be okay. We have apartment complexes that are being built that way.

In New Orleans East, we are getting ready to restore a hospital out in New Orleans East. And the design of that hospital is that the first floor, for the ground level of that hospital, will not be anything but driving the emergency vehicles in there-- the ambulances, and then everything else will be on higher levels.

So, for an urban environment it makes sense for us to preserve that land and not necessarily turn it into green space. There may

be some instances where green space is appropriate, but there should be a certain amount of flexibility to make the case, like Mayor Duffy said, and be held accountable for what we do.

Mr. DIAZ-BALART. Thank you, Mayor. And the other two honorable Mayors, you also agree that this Demolish/Rebuild Program makes sense?

Mr. DUFFY. I concur with Mayor Nagin. We have discussed that before, and it does make sense. I think having the flexibility is important-- while I understand flexibility is sometimes harder to find in law-- especially in cities.

We have a large flood plain in our city that we would want to rebuild and would want the flexibility to do so, as opposed to just providing green space, especially as space gets condensed. I think Mayor Nagin has the most experience with this of any of us. Clearly, I fully support his position; I think it does apply to our city as well.

Mr. DIAZ-BALART. Thank you.

Mr. COWNIE. Yes.

Mr. DIAZ-BALART. Thank you, Mayors. Thank you, Madam Chairwoman.

Ms. NORTON. We have to look at the statute to make sure that cities like yours and mine, cities all over the United States, fit into the Stafford Act; and that is the whole basis for this hearing. This is why your testimony here and particularly your task force has been so useful to us.

Remember, the Stafford Act is old; and I think it is a very broad and useful act. We are trying to improve it step by step as we go along, and your testimony has been superb. We very much appreciate your traveling from such distances to be with us today. And we congratulate you all and especially Mayor Nagin as he leaves office. Thank you very much.

Mr. NAGIN. Thank you, Madam Chairwoman, and thank you, Members of this Committee.

Ms. NORTON. We will call the next panel: Larry Gispert, the past President of the International Association of Emergency Managers; and Chad Berginnis—I am sorry. I am missing someone. David Maxwell as well, National Emergency Management Association; and Chad Berginnis, who is Senior Specialist at Hazard Mitigation and Floodplain Management, a Michael Baker Corporation. He is testifying on behalf of the Association of State Flood Plain Managers.

We will be most interested to hear your take on what we have asked them, the Mayors, about, beginning with Dave Maxwell, President of the National Emergency Management Association. Mr. Maxwell.

Mr. DIAZ-BALART. Madam Chairwomen, could I have a moment of personal privilege?

Ms. NORTON. Always.

Mr. DIAZ-BALART. Thank you, Madam Chairman, for allowing me.

One of the witnesses today is from Florida, from Hillsboro County. He is the past president of the International Association of Emergency Managers. He has testified before our Committee several times, and we always appreciate his expert counsel, as we do

of all the witnesses. But, yes, I am a little parochial, and it is good to see you, sir.

Thank you, Madam Chairwoman.

Mr. GISPERT. I will be going back to Florida tonight.

Ms. NORTON. Localism is preferred here. We appreciate that.

We appreciate to hear first from Mr. Maxwell.

TESTIMONY OF DAVID MAXWELL, PRESIDENT, NATIONAL EMERGENCY MANAGEMENT ASSOCIATION; LARRY GISPERT, PAST PRESIDENT, INTERNATIONAL ASSOCIATION OF EMERGENCY MANAGERS; AND CHAD BERGINNIS, SENIOR SPECIALIST, HAZARD MITIGATION AND FLOODPLAIN MANAGEMENT, MICHAEL BAKER CORPORATION, TESTIFYING ON BEHALF OF ASSOCIATION OF STATE FLOODPLAIN MANAGERS

Mr. MAXWELL. Thank you.

Chairwoman Norton, Congressman Diaz-Balart, and Members of the Subcommittee, thank you for this opportunity to testify today. I come before you representing the National Emergency Management Association and the emergency managers of all 50 States, territories, and Washington, DC.

As the Committee considers H.R. 3377, we continue to appreciate the Committee's swift action on this critical legislation and hope the bill will be quickly approved in order to strengthen emergency management capabilities across the country. You and your staff are to be commended for the work you have done thus far.

The Stafford Act stands as the pinnacle piece of legislation affecting the emergency management profession. The original Act was intentionally written in a broad manner to allow maximum flexibility for practitioners and discretion by the President. NEMA continues to support this flexibility. In recent years, however, we have experienced reduced flexibility through unnecessarily strict interpretations of the law. These interpretations have led to more rigid regulations and policies not accurately reflecting the true intent of the Act. A majority of NEMA members agree the primary issue during disaster response rests not with the Stafford Act overall but rather with disaster assistance policy.

Fortunately, FEMA leadership has recently taken strides to address previous policies and regulation interpretations. We applaud FEMA's efforts and wish to allow them appropriate time to complete their full review. This current policy review will surely drive any potential need for more broad-reaching Stafford Act changes in the future.

While NEMA continues to place trust in FEMA's leadership during this review process, we continue a doctrine of trust but verify and intend to advise accordingly. Discussions continue within NEMA regarding whether or not the Stafford Act requires amending to address catastrophic disasters, but we remain steadfast in our belief that the Stafford Act does not require broad and sweeping legislative changes at this time.

Regardless of when and if major changes are ever considered to the Stafford Act, one issue behind which NEMA stands unified is the necessity for State governments to remain the sole source of entry for Federal assistance into the States. When devastation at the hand of a disaster occurs, it remains the responsibility of Gov-

ernors and State governments to support communities by insuring a seamless disaster response among all levels of government. State responsibility also includes the provision of resource coordination in a timely and efficient manner, interstate mutual aid as necessary, and State and Federal disaster assistance programs appropriately implemented.

While NEMA would prefer not to see the Stafford Act significantly amended at this time, the imperative of reauthorizing aspects of the Act remains. Specific provisions within H.R. 3377 currently before your Committee achieves such reauthorizations, and NEMA supports many of them.

I have outlined NEMA's position in detail in my written testimony, but, in general, our priorities include the reauthorization of the Pre-Disaster Mitigation Grant Program; the reauthorization of the Integrated Public Alert and Warning System; and support to Urban Search and Rescue Teams, about which two other NEMA members have testified before this Committee; the reauthorization of the Disaster Relief Fund; and the reauthorization of the Emergency Management Assistance Compact, or EMAC.

Specific to EMAC, the capabilities of this program remains sustained by the efforts of all States and would be bolstered by reauthorization. Also, while EMAC currently receives FEMA grant funding, fulfilling NEMA's request for our $4 million line item appropriation would codify the program for use in future disasters. In my opinion, $4 million in Federal funds stands as a minimal investment for maintaining a proven national emergency response capability that day to day is equipped, trained, and ready to provide critical disaster response resources and support between States.

Overall, NEMA remains pleased with the current structure and outline of H.R. 3377 and discourages broad and sweeping changes to the Stafford Act. Should legislative changes become necessary in the future, implementation at the State level should stand as the single most important undercurrent to any recommended Stafford amendments.

I welcome any questions you may have, and NEMA will continue to offer support to this Committee and your staff as H.R. 3377 continues to move forward in the process.

Thank you.

Ms. NORTON. Thank you, Mr. Maxwell.

Next, Mr. Gispert, who is the past President of International Association of Emergency Managers.

Mr. GISPERT. Madam Chairwoman Norton, thank you.

I am Larry Gispert, the Director of Emergency Management for Hillsboro County, Florida, located in the Tampa Bay area. I am past President of the International Association of Emergency Managers. IAEM is our Nation's largest association of emergency management professionals, with close to 5,000 members. Our members serve mostly at the local level, which includes both large urban areas as well as the smaller rural communities.

Since Hurricane Katrina, a number of organizations and experts have examined the need for changes in the Stafford Disaster Relief Act as well as the Federal Emergency Management Agency's regulations and policies. Most recently, the U.S. Conference of Mayors

has performed a review and issued the report which is the subject of this hearing. Opinions differ widely as to how, but everyone agrees our local communities need to prepare and recover as rapidly as possible.

We would like to comment on a few of the issues raised by the Mayors' report.

One of the key issues is a request for a catastrophic disaster designation. To some, a definition of a catastrophe would be any devastation severely impacting a community, while, for others, it would also require in addition some major impact to the overall Nation. We would urge caution in changing existing laws and policies.

Caution is also warranted when considering enhancing the role of the Federal Government, including the military, at the expense of the authority and the responsibility of the State and local governments. However, if it is decided to define a catastrophic trigger and make additional resources available, those provisions should be contained within the Stafford Disaster Relief Act. The Mayors' report agrees with this position.

The Community Disaster Loan Program is currently capped at $5 million. We believe this cap to be too low. We don't have an increased amount to recommend to you.

We do agree that a strong case management program is necessary, and we understand FEMA is currently testing one in a pilot program.

The disaster declaration process needs to be quick and deliberate. After FEMA makes its recommendation, the Presidential decision on the declaration should be forthcoming without further layers of review.

We also urge considering use of the Cost Estimating Program to expedite the repair or replacement of eligible projects.

We are quite concerned about making private for-profit entities eligible for disaster assistance. We believe that it would act as a disincentive and cause private entities to consider not purchasing insurance and also not having a business continuity plan. If you allow reimbursement for one, then you may create a slippery slope. Where do you then stop?

We would like to make comments on H.R. 3377. We urge reauthorization of the Pre-Disaster Mitigation Program. We strongly support the work of national Urban Search and Rescue Teams and the authorization of them in your bill.

We support the Emergency Management and Assistance Compact. Under EMAC, the State of Florida sent more than 6,200 personnel to assist Mississippi in their recovery from Hurricane Katrina. Most of those personnel came from Florida counties and cities.

Any discussion of disaster recovery also must include preparedness. Proper preparedness depends on a strong foundation of emergency management systems at the State and local level. Many local governments are finding it difficult to maintain an independent management agency. They are assigning these duties to other agencies that are already overburdened with existing responsibilities.

Every community needs someone continuously planning, training, exercising, and thinking about resource allocation. When this responsibility is relegated to another agency, proper planning suffers from the inherent lack of attention.

In Florida, we say the first 72 is on you. This recognizes the responsibility of individuals to be prepared. We believe all citizens should do their utmost to take care of themselves, family, and, hopefully, their neighbors. If our citizens would do this, we could then concentrate our focus on helping those who cannot help themselves.

It is also vital that all levels of government provide information to citizens that explains what the authorities can and cannot do in a disaster situation. Citizens' expectations will always exceed the ability for any government to deliver services during a disaster. Knowing full well that it takes people and money to properly respond, our citizens will still expect us to respond rapidly and effectively, regardless of the current economic situation.

Finally, we would like to address the 100 percent Federal reimbursement issue identified in the report. Like the reimbursement to private entities issue, we believe this would act as a disincentive to proper planning and preparedness. We believe that it remains important for State and local governments to have some skin in the game. This makes all members of the team responsible for jointly setting recovery priorities as well as minimizing fraud, waste, and abuse of these taxpayer funds.

My father always told me, them that pay for it have a right to call the shots. No local community really wants the Federal Government to totally dictate how they rebuild and recover from a disaster.

I will be happy to answer your questions.

Ms. NORTON. Thank you very much, Mr. Gispert.

Now we have, finally, Mr. Chad Berginnis, testifying on behalf of the Association of State Floodplain Managers. He is a Senior Specialist at the Hazard Mitigation and Floodplain Management Michael Baker Corporation.

Mr. BERGINNIS. Thank you, Madam Chairwoman.

I am Chad Berginnis, Mitigation Policy Coordinator for the Association of State Floodplain Managers. I am also a former ASFPM Chair and a former State hazard mitigation officer in Ohio. So the mitigation programs that have been talked about, I have administered those Statewide for several years. Interestingly, my experience with the hazard mitigation grant program was that of a local project manager in the late 1990s for a flooded small village.

My organization represents over 14,000 individuals working in all aspects of floodplain management, disasters, and mitigation. Along with our 29 chapters, our mission is to reduce flood losses and enhance the natural and beneficial functions of floodplains.

I wish to share three guiding principals of ASFPM that are applicable to the testimony I am giving: First is the concept of shared responsibility among all levels of government but a recognition that local leadership is essential. Another is our belief that those who inhabit the floodplain bear some responsibility for their actions and their choices. Finally, we believe that hazard mitigation is the cornerstone of effective floodplain management.

The Conference of Mayors report is a useful document reflecting the direct experience of mayors and local officials who have dealt with disasters. The ASFPM largely supports the spirit and intent of the recommendations, even though we may have some different ideas for implementation. Also, there are a few recommendations that we do not agree with.

I would like to first highlight several points of concurrence. In certain situations, ASFPM believes that adjustments to cost shares for various programs can be done. However, we also believe States and communities must have a stake in the long-term recovery and resilience. Therefore, we cannot support full Federal funding or full cost share for any program, including those disaster programs.

It is our experience that when an entity invests in its own sustainability it is more successful. Cost shares can be adjusted based on circumstances such as catastrophic events and maybe can be adjusted based on communities taking proactive mitigation measures, the concept of sliding cost shares.

We concur with the need to expedite assistance, especially hazard mitigation assistance. As a colleague of mine has said, when dealing with flood disasters, mitigation assistance is needed while the carp is still flopping on the couch.

Even though that is not the reality of mitigation programs today, there are many things that can be done, but we must be mindful that it isn't done at the expense of the first mitigation actions that truly occur after an event, the enforcement of local codes and regulations. While most of these are local, there may also be State and Federal standards that must be adhered to as well.

We fully concur with recommendations on speeding up cost-effectiveness determinations and streamlining environmental review.

Mr. BERGINNIS. I do want to take a moment to discuss an area of significant disagreement with the report, and that is related to bypassing states and making local jurisdictions eligible grantees, especially for hazard mitigation programs. As I stated earlier, ASFPM believes Federal, State and local jurisdictions all have a role. A State has a responsibility to have a trained competent staff to administer these programs in a fair and expeditious manner. Some States live up to this responsibility, sadly some States do not. However, this basic framework has served the country well since the mitigation programs were established in 1988. ASFPM can provide many recommendations from a statutory rule and operational standpoint to ensure that all local jurisdictions are served fairly and timely within the existing framework.

Finally, I wish to highlight some recommendations in our written testimony where ASFPM would like to see future Stafford Act reforms. The first of these is authorization of public assistance for local cost of damage inspection and permitting. Who are the first mitigators after a disaster occurs? Those are the local code enforcement officials. As was discussed earlier, ASFPM supports both the compensation of straight and overtime for this particular group of officials, and we can explain why on further questioning.

Yet current policies specifically prohibit FEMA from reimbursing these officials for those activities from the public assistance program. There is a specific policy that actually prohibits this. Our second and third recommendations have a direct bearing on speed-

ing up the mitigation assistance process, an ongoing State technical assistance program for mitigation and implementing the ten-year old statutory language for delegating State mitigation programs to capable States.

Third, in aligning recovery in mitigation programs the cost shares should be the same for a particular event. There have been many events, for example, where public assistance is cost shared at 90/10 but hazard mitigation grant program is at 75/25. This disalignment has led to much confusion in many different disaster scenarios.

Finally, it is time for an independent evaluation of our mitigation planning efforts. In the space of 10 years 15,000 communities have participated in mitigation planning. As plans are now being updated it is time review what has been done, identify successes and failures, best practices and identify what changes need to be made in planning requirements and future outcomes. This concludes my testimony and be happy to respond to any questions. Thank you.

Ms. NORTON. Well, I take your points about moving precipitously to change a statute that at least at the statutory level, at the level of the words in the statute, have not generally been much criticized. Of course, the implementation of this statute has been such a huge criticism on occasion, in part because FEMA reads the statute very narrowly, covers its you know what by doing as little as possible. In that regard, I asked the Mayors about, and I think one of you referred to dueling experts, certified local professional staff, where we almost do it by hand in New Orleans, mandated an arbitration process that has finally gotten, Charity Hospital, of all places, just got money out where we found literally billions of dollars just lying on the table for a while there.

And then separately the notion of what seemed to me the idiocy of mandating that each party go out and find themselves an expert to back them up so as to take as long as they can in the process.

So let me ask you, do you think the notion of requiring the parties to agree upon an expert in advance would be beneficial in promoting action and reducing delay?

Mr. MAXWELL. I will comment on that. Yes, ma'am, I think that would be beneficial. We do agree with the adjudication process.

Ms. NORTON. Did you have an answer for that, Mr. Gispert?

Mr. GISPERT. Yes. We would prefer that we have reasonable thinking people implementing the law and doing it up front and not having to cause arbitration. I am here to tell you the Stafford Act has been in existence for quite some time and it has not required major modifications to it. Just like why are there so many lawyers, because they can take the same simple English sentence and interpret it 20 different ways.

Ms. NORTON. Precisely.

Mr. GISPERT. You have the same problem when you are interpreting is that an eligible project or not. So I say keep the law the way it is, get reasonable people, do the reasonable thing and most people are willing to accept reasonable.

Ms. NORTON. Mr. Gispert the one thing we haven't been able to control is reasonable people. That is the one thing. All we can do is give them a law. But you have got to concede the structural problem of FEMA saying, you get your expert and you get yours

and then we will decide. Now that invites conflict. Why should the government invite conflict? Maybe people can't agree upon an expert. But if the statute says to the reasonable extent possible you have got to do that, rather than put it through an even longer process that appear at least in New Orleans to go on forever would there be any objection at least to asking people in the first instance to agree upon who the expert would be instead of trying to decide between their respective experts who are instructed to disagree. Can we at least agree on that?

Mr. GISPERT. Barring reasonable people, I will agree with you that arbitration is probably a legitimate method of——

Ms. NORTON. Remember, the arbitration which came about. This would assume that the parties hadn't even begun to deal with one another. But it anticipates what we found even outside of New Orleans that if you tell people to go get their experts, they are going to go get the one with their view. All right. Let's begin with an agreement on who the expert will be and then you eliminate something. You are right about arbitration. We do not assume that there will be an arbitrator that would come in anywhere near immediately. We assume that the people have been at the table, and at some point, a stalemate had been declared and that there are people on the ground waiting for some money, or at least to know whether they are going to get any money.

But what we found in New Orleans was that the subject was interminable in the worst disaster in history. Now, I agree with you, you can't take New Orleans as your template. We will never have another New Orleans. But we certainly want to learn from New Orleans. And we recognize that people may work these things out when the disaster has not been as great. But we would like at least FEMA not to be there. Remember now, when FEMA is the one I am not sure how objective an expert you got, FEMA is the government, FEMA's job is watch out because Norton is going to call you to account at a hearing, or somebody is going to go with a newspaper article if it looks like you gave too much to your respective jurisdictions and somebody is going to second guess you.

So they will second guess themselves by saying the taxpayers don't have much to give you and my job is to guard our money. But if you are one of those jurisdictions with people hurting on the ground, your job is to interpret our statute to your benefit. So we are trying to cut through that. And we recognize that—as I say, we hope never to have another New Orleans, or we hope never to go through a period. And we don't think you even hear about the other stalemates. We just think that when it isn't a New Orleans, people just keep going at it and keep going at it until they get it straight.

Does that save the government money or not? Obviously it doesn't. We end up owing more and more money as the disaster is lying out there. And then what we finally come up with is not enough and everybody hates that they didn't get enough in the first place.

How many times do you keep going around that mulberry bush before something gets done. And so I recognize your cautious approach, and we are only looking for ways to make sure everybody is included in the statute. You know, there are cities and there are

counties with vast amounts of land, and there are other people who are landlocked into rather smaller spaces. Making this statute conform to them all is not altogether easy. And that is why your balancing testimony is so important to us.

Now, you heard these cities talk about how in certain circumstances that they should be direct grantees of FEMA for public assistance programs and for the hazard mitigation program. They argue that they are the ones on the ground who know it and that there are great delays. Do I take it you don't agree, and if so, why not? I don't know if you all have been State officials and that is why you don't agree or if you can give me some objective.

Mr. GISPERT. I will take the first crack and then I will pass it to our friends of the State. I have always been a local official, but you have, when you have disasters they normally affect a fairly large geographical area and you have to have somebody at the upper level looking upon the needs of the whole. Now, just because you had all the damage doesn't necessarily mean that you need all the hazard mitigation money. That money may be more useful to more people somewhere else. So many States have hazard mitigation plans and project lists and they administer them. It is very easy to look at the CNN dot-com disaster which is where all the cameras are and ignore the rest of the community that is possibly affected and not let them get a piece or a taste of the pie, and that is what the State and upper officials are supposed to do.

Ms. NORTON. Do the rest of you agree with that?

Mr. BERGINNIS. Madam Chairwoman I certainly would agree with that. And I was the State official that administered the programs in Ohio.

Ms. NORTON. So the State and locality come together on this one.

Mr. BERGINNIS. Yes. And the State—let me explain just briefly. With the State mitigation programs the processes should be, at least as established by the way, should be largely transparent and known to the communities. States are required to have State mitigation plans that identify the processes by which they are going to coordinate with the local communities. In addition, after a Federal disaster declaration States are required to prepare an administrative plan, and that administrative plan details the processes and procedures by which those funds are going to be distributed. Those are documents that certainly communities can have input into. But the point that was stated early is well taken. Is that at the State level you look at the needs of the whole and you establish a selection process that distributes at least those funds in as fair of a manner as possible.

Ms. NORTON. Now, the Mayors suggest that cities should be able to provide assistance at least to each other directly. Do you believe that that assistance should also have to go through the State before cities can help sister cities or do you think the States have to decide that as well.

Mr. MAXWELL. I am mincing words here. I am trying to think of appropriate comments. To some degree I think you saw in Katrina, not necessarily with New Orleans but a lot of the outlying cities, cities going and helping each other. They can do that. However, the existing emergency management assistance compact is a State-to-State assistance compact. It is an agreement that is ratified by

Congress that the States have agreed to. We can help—that can be utilized to share city resources, certainly. If a city wants to go to another city directly between those two, they can do that. They will not have the protections of the compact.

Ms. NORTON. I can see what you are saying. I can see the balance you are trying to strike there. Mr. Gispert, did you have a response?

Mr. GISPERT. As a part of the EMAC process and mutual aid process, all the legal issues have been resolved and agreed to; who handles the workmen's comp, what happens if a helping public employee gets injured on the job, who is going to pay for that? All that has been resolved. Who pays how much for the bulldozer, for the crews. If a city in Iowa decides to say I want to send somebody to help down in Tampa, Florida, and if it is on their own nickle, it is on their own nickle.

And none of these issues have been resolved. There is no workmen's comp understanding. And what we are saying is if you go through processes such as EMAC and mutual aid all that is laid out, it is all legal, it is resolved and you get your help in a timely manner.

Mr. MAXWELL. And in most cases, it is entirely seamless to the—a city who requests assistance they don't care where they get assistance. They need help.

Ms. NORTON. But they need it quickly.

Mr. MAXWELL. And normally the channel that they would go to is turn to the State and say we need help. We can then do that going out to the other States who reach out to other cities and do it.

Ms. NORTON. I am going to ask Mr. Diaz-Balart if he has any questions at this time.

Mr. DIAZ-BALART. Thank you very much, Madam Chairwoman, a couple actually, if you will allow me. One is, Mr. Gispert, you recommend caution, I think is the word, in considering changes to enhance the role of the Federal Government following a huge catastrophic type disaster. Can you talk a little bit about key issues that should be examined closely in considering an enhanced role for the Federal Government?

Mr. GISPERT. I am about ready to end a 32-year career at local government. I am going to retire soon, thank God. And over my career there have been events in my career what I call knee jerk. When something happens, somebody wants to do something so they end up doing something quickly and it winds up not being the right thing and you have to go later on and clean it up. The Stafford Act has been a well-established law that has been in existence for quite some time. It works. It may might need some minor peaks and tweak, but our caution to you is do not make major changes to you. Now, the other thing that happens is if you open up the Stafford Act for amendment there are other agencies out there that might want a piece of the Federal pie. They might want to say, well, you need to identify X, Y and Z as reimbursable that are currently not reimbursable, because as you know the Stafford Act is primarily designed for local governments and citizens to get reimbursement. So that is why we caution you don't knee jerk it, don't change

something that really doesn't need changing. If you do do a change, make sure it is necessary and it does what you want it to do.

Mr. DIAZ-BALART. Thank you sir. I asked the previous panel a similar question about the Demolished/Rebuild program. And if the three of you can kind of comment, do you think FEMA should allow funding for Demolished/Rebuild in its mitigation programs? Do you all believe that FEMA already has the legal authority to provide funding for the Demolished/Rebuild? And can you also talk a little bit about how Demolished/Rebuild can be effective in helping to mitigate against future disasters? If you all would care to, and I asked a similar question to the previous panel, so I thought I would like to hear from you as well.

Mr. BERGINNIS. Yes, Ranking Member Diaz-Balart. Let me first by saying that we view mitigation as a tool box where different actions are available. And through the mitigation programs, a community chooses the most appropriate mitigation actions that is based on their future goals, development objectives and so on and so forth. And so among those options that are currently available under HMGP you have acquisition and demolition. And as the previous panel talked a little about when you do acquisition land is deeded as green space.

So there is always a tradeoff on that one. And it is important for folks to understand it. You have—for flood mitigation you have elevation in place elevating a damaged building higher than the flood. You have retrofitting of buildings, changing the systems, hardening the building or making it flood proof to where it is resistant to flooding. So Demolished/Rebuild is another tool in the tool box, and it focuses in on those areas where it is not cost effective to do an elevation in place because perhaps the building is simply too rickety to withstand the elevation process, it costs too much and it is actually more cost effective to demolish it and rebuild something with a similar type structure.

So from the standpoint of it being another tool in the tool box, yes, we do support Demolished/Rebuild and its use. The one caveat that we would put on that, but as well as elevation and some of the other options, is that again it has to be suitable for the site. So something like demolish rebuild for example really does not make sense in areas like floodways which are the highest hazard high flow areas and maybe things like coastal high hazard zones, the velocity zones. Thank you.

Mr. GISPERT. As you know being from Florida that is going to be our nightmare when we take a big hit and our coastal communities are devastated and they are going to want to rebuild back and we are going to say it wasn't smart for you to build there originally and it is not smart for you to build back. So it is going to be a legal teeth gnashing and stuff like that. But if you are a purist you say God told you that you shouldn't have built there, I took your home away from you with a hurricane, you got a wake-up call, don't build it back. So I think the build and rebuild is an appropriate thing, and it needs to be considered when you want to get structures out of known areas that will always cause you problems. The flood zones, the coastal high hazard area, I am not looking forward to that day but it is going to happen.

Mr. MAXWELL. NEMA has not developed an official position on that but we will be happy to vet it with the membership and get you an answer.

Mr. DIAZ-BALART. Great. I appreciate that. And Madam Chairman if you would allow me one last question.

Ms. NORTON. If you would yield me on just that question, demolish rebuild?

Mr. DIAZ-BALART. I always yield to the Chairwoman.

Ms. NORTON. He is such a gentleman.

Mr. DIAZ-BALART. That is why we have such a great relationship.

Ms. NORTON. All you have to do is come down here and you will see it is not true. But the demolish rebuild, you heard the exchange between the Mayors and me, and I was trying to look to see if flexibility made any sense because I certainly don't support just building again and having the damage again.

And Mayor Nagin did say, for example, and I asked for other examples and I asked him to submit examples, a hypothetical, so I could have some sense of whether or not this rather blanket language in the statute that says green space only essentially is appropriate for every living place in the United States, including big cities. I need only think about the Federal triangle. You can say, and it is a flood plain, and we are having to do the same 100-year work that you all are doing. But I bet you one thing. They are not going to stop having headquarters in the Nation's capital.

But let me go back to really what I am after. And that is the example that Mayor Nagin put, that in New Orleans they agreed it would have to be a structure, would have to be absolutely stable, you couldn't build, it would be elevated, but he said for cars, you could have that first floor to be for garages and it would essentially help a city, which obviously before the hurricane had a hard time keeping people.

Now, would that be an example of where some flexibility left to perhaps some language that would bottle it or encase it would be useful and would make a statute applicable to various areas of the United States, including areas that might be rationed for space.

Mr. GISPERT. We have a model in emergency management. It is called Semper Gumby.

Ms. NORTON. Translate that for me.

Mr. GISPERT. Always flexible. So the issue is there may be reasons that you want to not follow the rule and some official says for the good of the order we want to do this. That should be an option. But generally speaking—but once again, the other thing is he was told, you can rebuild, you just can't use HMGP money to do it, so he needs to go after other money to possibly do it if he doesn't want to get into that green space stuff. But flexibility is an issue that I think should be in the rules.

Mr. BERGINNIS. Let me clarify on HMGP at least, again, having administered the program. HMGP inherently has a lot of flexibility in it. In those first few days after a disaster, and I did this with the City of Finley in Ohio after a massive flood disaster, we sat down with community leaders and we talked about the different options available for funding under HMGP.

Only one of those being acquisition triggers the green space requirement. And it is one of those things where we needed to lay

out the array of options for local leaders to then choose. ASFPM would find it very problematic to change the language that deals with green space because at the very beginning communities have the option of either doing a buy-out or doing the elevations as Mayor Nagin had indicated where you park the cars underneath. That is an equal and different option that is available under HMGP right now. Thank you.

Mr. MAXWELL. And I would just add that NEMA fully supports HMGP and we fully support any flexibility that you can build into any program.

Ms. NORTON. I am sorry, I yield back to the Ranking Member.

Mr. DIAZ-BALART. Thank you, Madam Chairwoman. I actually just have one more question. Do you all agree that FEMA should finally implement its existing authority to delegate the administration of HMGP to the States that meet certain criteria? If so how do you believe this would improve the process. Your thoughts on that?

Mr. MAXWELL. Yes, we would like to see the States that would want to do that and meet the criteria that they have that capability. Certainly any streamlining, any cost saving measures that could be put in place we would be all for.

Mr. GISPERT. If they can do the job, then they should be able to do it. The key criteria is can they meet the requirements and fulfill the requirements.

Mr. BERGINNIS. Several years ago, FEMA piloted the concept called the managing State program. I would not call that delegation of the program as is required as is mentioned in the statute. But in the managing State concept, and we were one of those, once we received that designation we were able to process HMGP applications without the FEMA regional review. And that did expedite the process significantly.

So when you have a capable State in theory delegating that authority to the State you eliminate one level of review and you would have a faster process.

Mr. DIAZ-BALART. And I do understand. In the State of Florida, we have had some serious delays in getting FEMA to move forward to the point where they have had to get extensions even. Not because the State wasn't doing its part, but just because getting through the whole FEMA process. So there is a consensus here that FEMA should finally go ahead and do that and that it would help, right?

Mr. BERGINNIS. Yes.

Mr. DIAZ-BALART. And we have heard obviously that there has got to be criteria and that is obvious.

Mr. BERGINNIS. And I am sorry, Ranking Member, if I could add just one more comment. Since that time FEMA has also developed the enhanced State mitigation plan requirement, and they are very high standards that a State has to pass. But you can be qualified as an enhanced plan State. You get more mitigation funding when you do that. Enhanced plan States should be able to qualify quite easily for a delegated State program. Thank you.

Mr. DIAZ-BALART. Thank you very much. And again, thank you Madam Chairwoman for always being very generous with me and my time. Thank you.

Ms. NORTON. Always Mr. Diaz-Balart. And I must say I would be impressed with the, I don't know, model program that you describe. I am—obviously the State has to have a plan and the State gets monitored. I do believe that where a State has shown they get the money out, that is important, and that it is closer to the ground I don't see why Washington should be put to the task of managing such a program.

The fact is that we don't manage lots of programs from Washington. Most of the programs are managed in the States. We don't try to manage welfare programs for example, say a big program from here. We don't try to manage transportation programs, we don't try to manage public works programs. What do we know about it. We are about to do, based on a horrific accident here, with the metro system here where 11 people lost their lives, no safety regulation in the State, so how do you do it. There was actually a law that said you can't regulate safety. You regulate everything else; railroads, air travel, not this. And so now we have had this catastrophe and so everyone is looking at it now. But it is interesting how we are looking at it. I would like the Ranking Member to see that this is the administration's proposal I think takes into account how State administration can be not only beneficial but better.

Essentially it says, and I am looking at this as the kind of model you are describing, Mr. Gispert, it says, okay, States, you come up with a plan for a safety regulation of your on transit system. Now, there are going to be Federal regulations because we have seen what happened, what we had when States had their own systems. These made you want to sob. They were systems where essentially there was virtually no staff. There was systems where there was no regulation. So they set up faux systems. So it said you set up your own system, adapt it, according to broad Federal regulations of a kind that I think you must be talking about, Mr. Berginnis, because they had to do a plan that met Federal regulations, then you manage it.

Now, if you don't want to do that, the Federal Government says in this statute, that I guess is before our Full Committee, if you don't want to do that, then the Feds will make you conform to the statute and we will do it from Washington. It gives the State that wants to do it, is equipped to do it or the moment it gets equipped to do it, it is closer to the ground, it does it the way it regulates, or sorry, administers most problems—most programs in our country.

So I would agree with Mr. Diaz-Balart. You have a State that is particularly practiced in hazard mitigation, and for that matter, almost everything else having to do with disasters. So the Committee, the Subcommittee is looking for that kind. We expect people to be on the ground, not where we are up in the stratosphere. We know where we are. And we know, that is why we go to areas to, in fact, find out something. If FEMA were, and staff reminds me in H.R. 3377, which you heard me refer to over and over again, because we are trying to see if there is anything we should do to try to perfect it even further, FEMA must establish criteria for State management of the hazard management program within 180 days. So that is really the answer.

I did not know this, how specific we had been in that regard. It shows you that we are at one on this. Let me just ask you a few more questions. We have kept you a long time, but we have done so because just as you say watch what you wish for, you wish you hadn't wished you wish you hadn't done it. You call for something that some would consider radical, I think it is you, Mr. Berginnis, that the hazard management program should be 100 percent federally fund, it is about 75 percent federally funded now.

But Mr. Gispert said everybody needs some skin in the game. So could you all get on this the way you did on the last question that came before you?

Mr. BERGINNIS. Actually, our position, I apologize if I misspoke, but I think Mr. Gispert and I do agree on the fact that everybody has to have skin in the game. And that even though there may be reasons to adjust a cost share towards 100 percent there should never be a situation where you have a full 100 percent.

Ms. NORTON. So you do agree?

Mr. BERGINNIS. Yes.

Ms. NORTON. So the 75 percent match makes some sense to you?

Mr. GISPERT. We don't necessarily want to issue a rock statement that it has got to be 75 percent, 80 percent, 90 percent. What we are telling you is to blanket say it is always 100 percent will be a disincentive.

And we think that you need to have a—there may be cases where the Federal Government says that should be a 90/10 situation or it should be traditionally 75/25. There just needs to be something. They need to be invested in the program, because if they don't they will ignore it.

Ms. NORTON. Sure. Why should we put anything in it. Go to the Feds. And you see how small the program is. It makes us cry. When you see the good that it does relative to the amount of money we put into the program, oh my. No cost effectiveness. That is why we are always going back asking for more money. Let me ask you this, unless Mr. Maxwell had something to say on that. Now, the Mayors want the hazard mitigation program to be distributed in proportion to the damage. Now, you have reservations about such a system, as I understand it.

Mr. GISPERT. Yes, ma'am, I do.

Ms. NORTON. Would you explain that?

Mr. GISPERT. Once again, remember the process of the State, the overall plan. We have sat there and thought what happens if we have a major disaster, here are all the projects that everybody thinks they will need. And then when we see that the State of Florida is going to get $50 million then they go to that plan and they say that $50 million can be best spent on these projects. And it may not necessarily be focused totally on the ground zero of where the disaster was because everybody gets impacted.

So we think it should be according to a well thought out plan and distribute the money most good for the most people.

Mr. MAXWELL. Also I would like to add that most of the time mitigation is declared for the entire disaster area or the entire State. So the State will look and try to coordinate the funds as best we can. But there are a lot of factors that go on with this. There is a cost share. Oftentimes, the city or county that was directly im-

pacted by the disaster might not have the funds to match so they can't do the mitigation project. So there are a lot of factors in there. Each local entity has their own mitigation plans, their own projects that are delineated. So the State then can look at what is there ready in the disaster areas along with the rest of the State.

Mr. GISPERT. I need to correct something. In the State of Florida, we do take into consideration the impact of communities. That is a part of the idea and the thought of where the money is distributed. It is not the sole criteria. And I think the Mayors were, in essence, saying that you know they needed a bigger chunk of the pie, we took the hit, we should have got a comparable amount of money. We don't think that is the right way to do it.

Ms. NORTON. And of course, it is interesting that that was not just the New Orleans template. Mayors all seem to think that when the damage occurs in places, like in congested big cities, it is greater damage and therefore they should, that greater damage probably comes simply because they are more congested, there is more to damage in a space that is smaller.

You say, Mr. Gispert, well, one factor should be—I guess the startling figure which may be due to something else coming out of the State of Louisiana where they had, I don't know, 57 percent or some such number of the damage and it is a tiny morsel of the mitigation funds, when you see how it can become a gain in New Orleans and on the golf course kind of made me shutter, when you want to mitigate as much as possible there.

Mr. GISPERT. I did hear the mayor say that there is a lot of money hung up not yet distributed. He only got X amount of percentage of the money distributed.

Ms. NORTON. Do you think this is just a question of the efficiency of the States involved?

Mr. GISPERT. It could very well be ma'am.

Ms. NORTON. Because you don't think that that is widespread, that notion of—I asked him how come it is stuck, how can you unstick it. You don't think that that is more generally a problem since we are looking at a statute generally not just at one area.

Mr. MAXWELL. I think that may be a unique situation in that you are just seeing things like Charity Hospital being approved for the PA program. There are a lot of factors that are going on in that area.

Mr. BERGINNIS. And I would agree with Mr. Maxwell on that. It probably is more process oriented. Those numbers were startling. And again, from the standpoint of having administered one of those programs, in a garden variety disaster that funding should be able to be distributed very quickly.

States should have the processes to do that. Again, Katrina was very unique from the standpoint the massive amounts of funding and things that happened, but certainly process improvements could be made.

Ms. NORTON. Let me ask one final question, at least from my questions. And whether the rest of you agree with Mr. Gispert's testimony. He says that in Florida, Mr. Diaz-Balart, he tells his citizens the first 72 is on you. Now, some of us—well, let's take the situation I know best. It is true that when we heard there was a big storm coming, they cleared out all the—you know you couldn't

find a shovel, you couldn't find a loaf of bread. People did seem to know. You ought to know certain things just by living where you are.

And apparently people knew that they better rush to the store, and it was a big day for every supermarket or every hardware store in the region. Is that what you mean or is there a problem for citizens being left to believe that they are on their own in the first 72 hours.

Mr. GISPERT. I want to give you a real good example, and Mr. Diaz-Balart will remember it. 2005 Hurricane Wilma hit the southeast coast of Florida where millions of people live. The storm came in off the gulf so it backdoored them. The biggest problem they had in reality was a total loss of power along that whole coast.

The storm had not stopped blowing and those people started standing in line waiting for food, water and ice. And my question to them is where is your hurricane kit. They go, huh. Well, we have been preaching how long everybody should have a hurricane kit, and these people, thousands of people stood—you know the wind stopped blowing and they are waiting for food, water and ice.

So you have to get a little abrupt to them and say the first 72 is on you. Our motto used to be we are from the government and we are here to help you. Well, the thing is we are from the government and we may not be able to help you for a while so you need to be able to help yourself, your family and your neighbors for 72 hours. And that is why we use the first 72 is on you.

Mr. DIAZ-BALART. If I may, Madam Chairman. What I also remember is that before the storm was over you had people asking for food, water and ice in many cases in places that you could just turn on the tap water. We hadn't lost water. And so—and I don't mean to be critical but sometimes, you know—I guess in the case of Florida I will tell you that sometimes we are a little bit victims of our own success because people expect, since frankly photo has its act together, that you know the light goes out and 20 minutes later you are going to have government services there saying what do you need.

And the reality is that if a big storm comes, I don't care if you are Florida and you have got the best situation and the best prepared people in the world, the big one comes you are going to be on your own. And there is that balance of telling people, well, we have a very good system and we are working on that, but people need to understand that if you do have a problem you better be ready because, yes, we are——

And Madam Chairwoman, thank you again because the Chairwoman has been there personally to see it and witnessed it and talked to people there and she has seen how prepared we are. But it doesn't matter how prepared you are. If something happens chances are you are not going to be able to get help. So in Florida we have people kind of expecting that we are going to be there thinking that since we got our act together there is never going to be a problem. That is just not the case.

And I can tell you, Madam Chairwoman, that in my house, my household, and it all changed for me after Andrew, because before Andrew, Madam Chairwoman, I thought a hurricane is coming, big deal. After Andrew I am paranoid. And I have got MREs, I have

got water in packets, I have food, I have backpacks ready to go. And God willing, I will never need them, and after 5 years when they go bad, before that hopefully I can donate them so others can use them before they go bad or whatever, but if we have a real problem we can't expect the government to be there no matter how efficient, well run and how good things may be.

Mr. MAXWELL. And if I could add to that I think this is an extremely important point. We are all in this together. It shouldn't be worrying about Federal Government, State government, local government, it is also the people. It is citizens, local government, State government Federal Government all trying to do the same thing trying to help the people. So we have got to have that local involvement, those citizens involved in their own preparations, and that just has to be what the system evolves to.

Mr. DIAZ-BALART. And again, I just want to reiterate something which I think sounds funny but it is true. People were waiting in line, by the way sometimes for hours, for water and all they had to do was go home and turn on the tap, open the tap.

Mr. GISPERT. Would you like to hear another funny story. I went down, I am from Tampa which is 250 miles away, and I went down to help my friend in Broward County because he had been up for 60 hours, and we are in his EOC. Wilma comes through, the storm has subsided and gone off and the people are cueing up. One of the local TV channels had its TV camera and there was a middle aged gentleman standing in line. He had a pair of khaki shoes on, T-shirt and one of them Australian hats flipped up like this. And the cameraman said, sir, how long have you been standing in line. He said three hours. He said what are you standing in line for. He says water. He says where do you live? He said Pembrook Pines. He said, sir, the municipal water system is back on line. He said, but you don't understand, I drink nothing but bottled water. I wouldn't lie to you sir. I wish I had a copy of that tape to play.

Ms. NORTON. And now we are having to try to unlearn people about bottled water with all of the additional problems that the bottles cost and with the fact that the water probably came from the tap anyway. I appreciate those examples. The last thing we want to do at any time is to foster a culture of dependence, particularly since ultimately we are all dependant upon one another. We want to foster a culture of personal responsibility with the government getting there as soon as it can to assist you in meeting your personal responsibility. I say that with some passion because people don't even think that the emergency management personnel got to get from where they live to how they can help you. Somehow they have been flying up in the stratosphere saying whatever comes, we will parachute down to help you. The notion of that sense of emergency managers, because they have such an excellent reputation, will be very bothersome.

So I must say that I think that all it takes is a disaster like the one we just had here for people to learn and to learn quickly what to do. And I think you in Florida and in the other areas, especially you emergency management experts, have taught us much we need to know. I hope we don't have to experience anything like the kinds of disasters we have had here, let alone Katrina, in order to get that culture of dependence out of us, or this notion I only drink bot-

tled water, you know, the notion that somehow we are above the ordinary amenities I think this recession will drive out of a lot of us when we are going back to basics.

But your testimony has certainly helped us to go back to basics in getting balance on how we should go about any restructuring we do and any changes we make in the Stafford Act. I can't thank you enough for the testimony of all three of you, and especially for you suffering through our many questions of those who preceded you. Thank you so much for coming all the way to Washington to help us out. This hearing is adjourned.

[Whereupon, at 4:55 p.m., the Subcommittee was adjourned.]

Eleanor Holmes Norton

STATEMENT OF
CHAIR ELEANOR HOLMES NORTON
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

"U.S. Mayors Speak Out: Addressing Disasters in Cities"

MARCH 4, 2010

Good afternoon and welcome to all, especially our witnesses, to today's hearing, which will address the recent report of the United States Conference of Mayors Stafford Act Reform Task Force (Task Force) and disasters in cities. This report, from mayors who have on the ground experience with emergencies and disasters, is an important contribution to the subcommittee's ongoing work to improve the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

We are pleased that the United States Conference of Mayors convened its Task Force of 24 mayors to review and make recommendations on the Stafford Act, as well as on the Federal Emergency Management Agency's (FEMA's) programs, regulations and policies. Today, we will receive testimony from three of the mayors who were members of the Task Froce, as well as from professional emergency managers and flood plain managers, regarding the Task Force's recommendations.

The Task Force's report is comprehensive, covering a number of areas, including catastrophic disasters, hazard mitigation, individual and household assistance, insurance, emergency preparedness and response, and FEMA administration. Many of the recommendations in the report have wide support and agreement. However, in other cases, as we will hear today, some of the recommendations require further analysis and discussion.

Not all the report's recommendations require legislation. Many could be implemented by FEMA administratively through regulations or changes in policies, and the Subcommittee has always encouraged much greater use of FEMA's considerable administrative authority. In other cases, changes in law will be necessary. The Committee already has addressed some of the recommendations in legislation, including H.R. 3377, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2009," and other legislation that I am pleased to be a co-sponsor of, along with Chairman Oberstar and Ranking Members Mica and Diaz-Ballard. H.R. 3377 reinstates the mortgage and rental assistance program and contains a provision to provide additional mitigation assistance to states that adopt building codes. Both of these ideas are recommended by the Task Force's report. H.R. 3377 was ordered reported favorably to the House in November, and I expect it to be taken up by the full House soon.

I am pleased to recognize the mayors who are testifying on behalf of the U.S. Conference of Mayors, including Mayor T.M. Franklin Cownie of Des Moines, Iowa and Mayor Robert Duffy of Rochester, New York. If I may, I should say a special word about Mayor Ray Nagin, who also is testifying and who has appeared before this Subcommittee a number of times. This is likely the last time he will testify as the Mayor of New Orleans. We commend Mayor Nagin for leading his city through the greatest natural disaster to strike our nation, and for chairing the Task Force to help ensure that cities across the country can learn from his experience and the experience of the citizens of his city.

We look forward to hearing the testimony of all of today's witnesses about how we can improve how our nation addresses disasters in its cities.

James L. Oberstar

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
HEARING ON "U.S. MAYORS SPEAK OUT: ADDRESSING DISASTERS IN CITIES"
MARCH 4, 2010

I am pleased that the Subcommittee is holding this important hearing to consider recommendations from the United States Conference of Mayors on how we can improve the provision of assistance in the wake of major disasters.

Today, we will hear from three Mayors who served as members of the U.S. Conference of Mayors' Stafford Ask Reform task force. The Mayors we will hear from today, unfortunately, have first hand experience with disasters: Mayor Ray Nagin of New Orleans, Louisiana; Mayor Franklin Cownie of Des Moines, Iowa; and Mayor Robert Duffy of Rochester, New York. We will also hear from representatives of state and local emergency managers and flood plain managers. These officials work with Federal Emergency Management Agency (FEMA) authorities and programs every day and would implement any of the recommendations that are adopted.

The 24 members of the Stafford Act Reform task force represent all regions of the country and communities who are at risk for virtually every hazard our nation faces. This, once again, highlights the importance of an "all hazards approach" to

emergency management. I appreciate the thoughtful work these Mayors have done to reflect on their experiences and pool their collective knowledge to allow the rest of the nation to learn from their experiences.

In particular, I would like to thank the Chair of the Task Force, Mayor Nagin, who will soon be stepping down as Mayor of New Orleans. Mayor Nagin's city faced a disaster like none other seen in the nation in our lifetime. Mayor Nagin is no stranger to this Committee and has previously appeared before us to discuss the effects of Hurricane Katrina and the assistance needed to help his city recover. At today's hearing, Mayor Nagin and his colleagues are not here to seek assistance for their cities but rather make recommendations, based on their experiences, for changes that will assist in future disasters.

The Stafford Act Reform task force issued a comprehensive report in January recommending changes to the Stafford Act and FEMA's disaster assistance programs. This report covers a broad range of issues including catastrophic disasters, disaster response, preparedness, hazard mitigation, individual and household assistance, insurance, and FEMA's program administration. Some of the recommendations in the Mayors' report can be implemented by FEMA now, either through rulemaking or by changes in policy or practice.

Other recommendations require a change in law. The Committee agrees with many of the recommendations contained in the report and has already addressed some of the recommendations in legislation. In November 2009, the Committee ordered H.R. 3377, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2009" reported favorably to the House. I am pleased to have sponsored this legislation along with Chairwoman Norton, and Ranking Members Mica and Diaz-Balart. Provisions in the bill that address recommendations in the Mayors' report include: providing temporary mortgage and rental assistances to individuals and families at risk of losing their homes due to disaster; additional Hazard Mitigation Grant Program funds for states that adopt and enforce a state-wide building code; enhancing FEMA's case management program; special procedures for disasters with "extensive and widespread damage"; and requiring FEMA to implement several long overdue provisions, including a cost-estimating procedure for the Public Assistance Program, and state administration of the Hazard Mitigation Grant Program.

While there appears to be consensus on some of the recommendations in the Mayors' report, as we will hear today, in other instances further study is warranted. Today's hearing marks the first step in that process.

I welcome each of you and look forward to your testimony.

ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.
2809 Fish Hatchery Rd., Suite 204, Madison, Wisconsin 53713 www.floods.org
Phone: 608-274-0123 Fax: 608-274-0696 Email: asfpm@floods.org

TESTIMONY

Association of State Floodplain Managers, Inc.

before the
House Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings and Emergency Management

"U.S. Mayors Speak Out: Addressing Disasters in Cities"

Presented By:
Chad Berginnis, CFM
Association of State Floodplain Managers, Inc.

March 4, 2010

The Association of State Floodplain Managers (ASFPM) thanks this Subcommittee – Chairman Norton, Ranking Member Diaz-Balert and members of the subcommittee – for the careful attention you are paying to the recommendations of our Nation's mayors concerning response to and recovery from disasters affecting cities and communities. We believe this shows your recognition of the central role of local governments in dealing with the disasters that inevitably affect many communities every year. Disasters are local, and the leadership and responsibility for response and recovery must be at the local level. The role of the federal government and State governments is to support those efforts when disasters are so large that they overwhelm local resources.

We also thank you for your leadership in acting on needed revisions in the Stafford Act by reporting out H.R. 3377 last year. We appreciate the opportunity to discuss the Conference of Mayors' report and to offer some additional recommendations for Stafford Act amendments (following comments on the report) and welcome the opportunity to answer your questions.

ASFPM and its 29 Chapters represent over 14,000 state and local officials and other professionals who are engaged in all aspects of managing and mitigating flood risk, to address the loss of life and property from natural hazards. These aspects include land management, hazard mitigation, mapping, engineering, planning, building codes and permits, community development, hydrology, forecasting, emergency response, water resources and insurance. Most of our members work with the Nation's 21,000 flood prone communities struggling to reduce their losses from all flood related hazards. While we are, naturally focused on flood disasters, we note that floods are the Nation's most frequently occurring and costly disasters. In addition to promotion of wise floodplain management and disaster mitigation policies and practices, many of our members are directly engaged in both the response and recovery phases following disasters. Furthermore, if mitigation is not considered in the response and recovery phases, our communities lose the opportunity to become resilient and sustainable. For more information about the Association, please visit http://www.floods.org.

GENERAL COMMENTS ON THE CONFERENCE OF MAYORS' REPORT

This is a useful document, reflecting the direct experiences of mayors and local officials who have dealt with disasters. It includes many recommendations within our field of expertise that we agree with and support. However, there are a number of recommendations that we have concerns with and some that we do not support. In this testimony, ASFPM is commenting only on the recommendations that relate to the areas of expertise of our members.

The role of local government is central to planning for and managing disaster response, recovery, and mitigation. Local officials are the first responders, guide the response and recovery, provide facilities and capabilities to bring about effective response and recovery and have the authorities to make the many decisions that are necessary in the aftermath of a disaster. The report effectively makes that clear and also points to the need for improved streamlining and coordination with state and federal governments. We agree with both of these observations, but would raise the caution flag with respect to some of the recommendations for removal of limitations and compliance with regulations. In being responsive to local needs, local governments often reflect the desire to return to normal as soon as possible. Unfortunately, this often means "returning to normal in the same manner as before" with little regard to improving community and individual resiliency from hazards. Anything thought of as slowing down this process is seen as an impediment. While there are steps that can be taken to remove or adjust statutory or administrative impediments to rapid response and integration of hazard mitigation into recovery activities, it would be unwise to bypass what appear to some to be inconvenient limitations and restrictions in the interest of rapid return to "normal" conditions when those conditions actually contributed to the damage and would simply set the community up for a repeat of the same consequences in the future.

While we note the recommendation that a definition of catastrophic disaster be developed and that a different set of mechanisms be established to govern response and recovery in those catastrophic situations, we are concerned with what appears to be a call for easier access to funds with fewer restrictions under those circumstances. In particular, we are concerned with the recommendation to bypass state governments. Every level of government has a role and responsibility in disaster situations. Furthermore, even if a definition of a catastrophic disaster is

developed, the processes and procedures should not differ from any disaster response and recovery. Creating differences would simply slow the process since everyone involved would have to learn and implement two different processes.

While we agree that streamlining relationships is important, it is also important to recognize the key coordinating role of state governments. If FEMA had to coordinate more than 25,000 separate local governments – ranging from the largest cities to towns with fewer than 1,000 citizens – it would be a daunting, complex, expensive, and potentially more time-consuming effort. A more effective approach, which should be piloted in selected states, would be to implement the current Stafford Act authority to delegate administration of the Hazard Mitigation Grant Program to qualifying States. This provision of the Stafford Act, passed ten years ago as part of the Disaster Mitigation Act of 2000, has still not been implemented. A similar authority for State assumption of the Public Assistance and Individual Assistance programs may be appropriate. [See below for ASFPM Recommendation C.]

ASFPM firmly believes that local and state governments which take steps to lessen their own risks should be recognized for their efforts to take responsibility for their risks by such means as improved cost shares. Ironically, many of our disaster assistance programs and systems actually discourage local officials and citizens from pro-actively taking steps to reduce their risk by providing more assistance to those who have done less to protect themselves. To bypass restrictions and intergovernmental coordination and to provide for easier access to federal funds in one community can discourage another community from doing the right thing and assuming responsibility for risk. This is not fair to the Nation's taxpayers.

ASFPM agrees with the many observations in the report about ways to better integrate initial disaster response with genuine, sustainable recovery. There is a need for the federal government to better coordinate its available assistance across agencies and to maintain a longer post-disaster presence that is better proportioned between initial response and longer-term recovery. Also, there is a need for states to develop systems to expedite service and funding.

SPECIFIC COMMENTS ON THE REPORT OF THE CONFERENCE OF MAYORS

The following comments are organized to follow the format of the Conference of Mayor's report. (ASFPM's additional recommendations follow these comments.) Our most extensive specific comments deal with the section of the report on Hazard Mitigation. We are pleased to note the strong recognition of the mayors of the importance of utilizing mitigation assistance early and often in the course of response and recovery.

CATASTROPHIC DISASTERS

- First Bullet: ASFPM believes it is too broad to waive all requirements and compliance simply because an event is catastrophic. Doing so could lead to rebuilding that does not adequately account for prevalent hazards and would not promote the resilience achieved by decisions to rebuild in less hazard-prone areas.
- Second Bullet: Sec. 403 pertains to "essential assistance." Rather than a blanket elimination of the non-federal cost share, ASFPM believes it reasonable to provide for an adjustment of the cost-share based on circumstances.
- Sixth Bullet: ASFPM does not agree with a blanket waiver of the non-federal share. Current authority allows the minimum 25% non-federal share for Public Assistance to be adjusted under certain circumstances, and there have been disasters where the non-federal share has been reduced to 10% or even to zero. ASFPM strongly urges Congress to authorize a parallel adjustment to the cost-share formula for Section 404 Hazard Mitigation Grant Program so that if it is adjusted for Public Assistance, it is automatically adjusted for HMGP. As more States and communities work to implement seamless mitigation of public facilities during post-disaster repairs, having the two programs aligned in this manner will greatly reduce the complexities and foster more post-disaster mitigation. [See below for ASFPM Recommendation D.]
- Seventh Bullet: ASFPM recommends that, rather than provide Federal funding for administrative functions related to HMGP (presumably to identify specific projects, determine technical feasibility, develop benefit-cost analyses and other documentation, and prepare grant applications), FEMA should accept the documented costs of those activities as pre-application

costs that are eligible under the grant and, importantly, those costs should not be included in the cost of the project that is used in the benefit-cost analysis. However, ASFPM does recognize that there are often needs for technical assistance in developing these applications. Both states and FEMA should ensure that all necessary technical assistance is provided in a timely manner. FEMA should ensure that appropriate staff and resources are available at JFOs and after the JFOs close.

- Ninth Bullet: ASFPM is concerned about the suggestion that private and for-profit utilities be eligible for disaster assistance. While we realize that the infrastructure of for-profit utility companies is exposed to catastrophic events, we are cautious about the use of Federal disaster relief dollars to support for-profit entities. It is conceivable that some for-profit companies could reduce their routine maintenance work with the expectation that should a catastrophic event occur, Federal funds would be available for cleanup and recovery. Planning and designing for natural hazards should be a part of every business model.

HAZARD MITIGATION

- First Bullet: As noted above, ASFPM does not agree that HMGP funds should be 100% federal funds, although we endorse adjusting the non-federal cost-share for HMGP when the cost-share is adjusted for Public Assistance. Mitigation must not be viewed only as a Federal responsibility. Citizens and local governments have long made land use decisions that put people and property at risk, and thus must share in the cost of living at risk. The best solutions are those that are embraced by communities and that, ideally, satisfy more than one community objective. [See below for ASFPM Recommendation D.]
- Second Bullet: ASFPM does not agree with a statutory change to the way HMGP funds are allocated. The impact of disasters on each community varies, even in events that are catastrophic for one or more communities there are others nearby in which the impact is less severe. The current approach allocates the funding to the State, and States are required to establish mechanisms to determine priorities. Allocation directly to communities in proportion to damage would result in many communities that have identified viable projects but that sustained little damage, having no opportunity to seek funding, while communities with significant damage but no viable pre-planned initiatives, would have access to funds. Currently, States may elect to allocate funding by formula. For example, Florida has a three-

tiered allocation system that gives each county (and the municipalities in the county) first priority to use HMGP funds generated by Federal expenditures in the county. This system would be much less effective in States that do not experience frequent, large events.

- Third Bullet: ASFPM endorses facilitating access to HMGP funds, but believes changing the timing of fund availability is not the most significant impediment – it is the logjam in the development projects and FEMA's review of applications. As more communities have developed hazard mitigation plans in advance of disasters, they have more awareness of eligible projects. However, they often need support to develop those early plans to the point that they can be submitted as applications for funding. ASFPM believes that each State should be provided a minimum amount of technical assistance funding to support development of applications. In addition, we believe that FEMA must acknowledge that many States are capable of reviewing applications and should not be expending staff time and dollars replicating State reviews. [See below for ASFPM Recommendation B.]
- Fourth Bullet: ASFPM sees some value in further discussion of pre-certifying certain mitigation activities, but care would have to be taken to ensure that those activities are feasible and cost-effective. One obvious activity that could be pre-qualified is acquisition of substantially-damaged homes to remove them from the highest risk flood hazard areas and return the land to permanent open space.
- Fifth Bullet: Mandating that a certain percentage of the grantee (State) administrative costs be flowed down to communities does not recognize the variety of State programs and would likely significantly and adversely affect many State mitigation programs. Under HMGP, subapplicants (communities and eligible non-profit organizations) can include certain administrative and management costs as a project cost, which are then included in the benefit-cost analysis. ASFPM endorses excluding administrative and management costs from the B:C ratio. ASFPM also recommends that costs to comply with Federal environmental requirements be covered by Federal funds, but excluded from the B:C ratio. [See below for ASFPM Recommendation E.]
- Sixth Bullet: Most states already administer commercial and residential building codes that are based on nationally-recognized model codes. Additional mitigation funding should encourage new actions that reduce vulnerability to hazards, such as more stringent

requirements than those found in the model codes and standards, and not reward what is the status quo for most states.

- Seventh Bullet: We do not fully understand the intent of this recommendation. It appears to recommend approving projects that appear eligible but that may ultimately not be approved. We do not see how that would foster more effective mitigation.
- Eighth Bullet: Most of the costs of the listed activities are HMGP-eligible costs, but only if a project is selected for funding. As described in the Third Bullet above, ASFPM believes that each State should be provided a minimum amount of funding to support development of applications and those funds should not be contingent upon ultimate approval of the projects that the State worked on.
- Ninth Bullet: The Stafford Act does not require multi-jurisdictional plans, although regulations provide for such plans and many States encourage them. Every community may develop its own mitigation plan (unless constrained by State requirements). Thus, a town may have a mitigation plan and be eligible for HMGP funding even if the county in which it is located has decide not to develop a mitigation plan.
- Tenth Bullet: The Stafford Act does not have an explicit list of activities that are eligible for HMGP funds, and ASFPM does not endorse development of such a list. To be eligible for HMGP, the Stafford Act only requires that an activity reduce future damage, be feasible, be cost-effective, and meet applicable regulatory requirements, including environmental regulations. Thus, the current authority does not preclude the activity referred to as "demolish-rebuild." Only by policy is this activity deemed by FEMA to be ineligible. ASFPM supports demolish-rebuild with some cautions – we do not believe that this approach should be allowed in riverine floodways and coastal high hazard areas.
- Eleventh Bullet: We do not fully understand the intent of this recommendation.
- Twelfth Bullet: It has been many years since FEMA developed the list of grant-funded activities that are "categorically excluded" and do not require detailed environmental review. ASFPM recommends that FEMA report on activities that are not on the list and expand the list to include those that environmental reviews have indicated do not need that level of scrutiny.

- Thirteenth Bullet: ASFPM endorses FEMA's recent efforts to improve the application submittal and approval process, but believes there is much more that can be done. FEMA must improve consistency between Regional Offices and, in particular, must continue to improve the time it takes to review applications. As we have noted above, FEMA must rely more on State reviews, especially reviews of project types that have been come routine (e.g., buyouts and elevations).
- Fourteenth Bullet: This recommendation appears to pertain to the Public Assistance program, under which funds are provided only to repair the damaged portion of a facility. We agree that when mitigation is considered under Public Assistance, for example retrofitting a public facility, the facility as a whole should be considered, not just the damaged elements.
- Fifteenth Bullet: We do not fully understand this recommendation. The Stafford Act already requires that reconstruction and repairs conform to applicable codes and standards.

INDIVIDUAL AND HOUSEHOLD ASSISTANCE

- Recommendation regarding the National Disaster Housing Plan (bottom of page 4): In the rush to recover, all too often property is repaired to its pre-damage condition which means it remains vulnerable to future events. While ASFPM appreciates the importance of emergency funding for repair of permanent structures, we must keep in mind that damaged buildings that are located in mapped special flood hazard areas must be evaluated to determine whether the damage constitutes substantial damage as defined by the NFIP and the model building codes. Regardless of the cause of damage, buildings in floodplains must be brought into compliance with the current rules if they sustain substantial damage (determined if the cost to repair to the pre-damage conditions equals or exceeds the pre-damage market value of the building).

INSURANCE

- Fourth Bullet: ASFPM cautions that many local floodplain management officials already have to deal with situations where people who received both Individual Assistance and flood insurance claim payments quickly begin repairs without obtaining permits. The intent of the recommendation to waive proof of insurance requirement appears to be to speed up delivery of IA funds. We also question how expensive and complicated it would be to manage a reimbursement process. And we are concerned that people would drop their insurance

(specifically flood insurance). Too many people still do not understand that Individual Assistance does not pay to repair flood-damaged homes, and they could misinterpret the proposal as more than what it appears to be.

OTHER DISASTER GRANTS

- First Bullet: ASFPM does not support the recommendation to create a CDBG-like approach for HMGP. Not only would it circumvent State priorities and procedures established for HMGP as noted above, FEMA does not have the resources to deal directly with a large number of communities. While some States may not yet have efficient mitigation support capabilities, we do not believe the solution is to change the entire approach and bypass states. In addition, we believe that most of the problems that result in lengthy approval periods are related to FEMA's duplicating State reviews and having insufficient resources. Building stronger State programs will be more efficient and effective.
- Third Bullet: ASFPM has long endorsed eligibility for building inspectors and building officials who often must deal with a huge increase in workload that far exceeds their capacity to respond. [See below for ASFPM Recommendation A.]
- Fifth Bullet: ASFPM agrees that removal of slabs and foundations should be an eligible expense under Public Assistance when such funds are used to remove substantially damaged homes. It is it more cost-effective to have all demolition done when the contractor is on-site. In addition, old foundations rarely have residual value because they typically do not meet current building code requirements.
- Tenth Bullet: ASFPM is concerned that emergency preparations and response activities are being equated with mitigation actions. FEMA currently has four mitigation programs where funds can be accessed to undertake mitigation measures before a disaster event occurs. Mitigation actions permanently reduce risk and thus activities such as precautionary evacuations and emergency reinforcement or repair of levees should not be eligible for mitigation grant programs. Some of these activities for levees should not be eligible for mitigation funds as they are not mitigation (long term actions) rather these are actions for which the community is responsible as a condition of having chosen structural flood control measures as their mitigation option.

FEMA ADMINISTRATION

ASFPM concurs with the suggestion that FEMA personnel (permanent and disaster staff) and contractors should be focused on the mission. While compliance with the rules is important, of course, all too often we hear that FEMA's handling of mitigation seems to focus on finding what's wrong with proposals and saying "no," rather than facilitating improvements to proposals and providing support to States and communities who are committed to reducing damage.

- Third Bullet: It appears the intent of this recommendation is to require FEMA to accept, without review, the plans, designs and engineered performed by "certified local professional staff." ASFPM supports the idea that certain documents should be signed and sealed by registered professional engineers and architects (and often State laws and codes require certification of certain types of work). However, we recommend that each such sealed document be accompanied with a statement that clearly identifies what the professional is certifying. Also, ASFPM does not believe that the Stafford Act should be amended to simply take such certifications as final evidence without some level of review by states or FEMA.

ASFPM RECOMMENDATIONS FOR STAFFORD ACT AMENDMENTS

A. Authorize Public Assistance for Local Costs of Damage Inspection and Permitting
FEMA/DHS has consistently denied reimbursement of costs associated with private property damage inspections and permitting, despite the Congressional finding in the Stafford Act that "because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary."

Because FEMA's denials have cited limitations in Sec. 403 and Sec. 502(b), the Stafford Act should be revised to explicitly provide for reimbursement of costs incurred by communities to perform damage inspections, administration of codes and ordinances, and permitting of repairs and reconstructions when the damage to public and private property exceeds the capacity of the local agency responsible for those functions. This is especially critical in catastrophic disasters.

B. Modify Existing Authority in the Pre-Disaster Mitigation Program to Provide Annual Funding for State Technical Assistance

To foster development and maintenance of State Mitigation Program capacity to provide technical assistance to eligible subgrantees, the current authority that provides a minimum annual allocation to states should be changed. Rather than allocate a minimum amount for mitigation projects, the funds should be allowed to be used to support states to develop the ability to provide assistance on an on-going basis, not tied to specific projects. State technical assistance will improve identification of mitigation opportunities in both pre-disaster and post-disaster periods, will result in improved mitigation plans and grant applications, and will help significantly shorten the delivery of Sec. 404 hazard mitigation grant funds (see Recommendation C).

C. Implement Existing Authority to Delegate HMGP to Qualified States and Continue to Improve Efficiency of Post-Disaster Delivery of Mitigation Funds

FEMA has not initiated action to implement Sec. 404(c) Program Administration by States (42 U.S.C. 5170c) which was authorized ten years ago. States with approved "enhanced" hazard mitigation plans prepared pursuant to Sec 322 are poised to assume the additional responsibilities and authority. Delegation to one or more of the more active states will yield significant benefits, including faster processing of grant applications and awards and obligation of the program funds. Many of the communities that have very active mitigation programs are in these same states.

Now that many of the Nation's high risk communities have pre-disaster mitigation plans (and a growing number also are pre-designing projects), they need to have faster access to post-disaster mitigation funding (HMGP). It is common for decisions on applications to be made more than 12 months after a declaration, which leaves communities and property owners in an uncertain environment. Sometimes owners cannot wait that long and must invest their own funds and insurance proceeds in homes that are scheduled for floodplain buyouts. Most states perform a significant amount of review and forward eligible applications with recommendations for funding. FEMA should not take several more months to perform much of the same work. Congress should urge that FEMA continue to improve delivery of post-disaster mitigation programs and urge that FEMA strive to approve grant applications within 90 days of receipt.

D. Provide Authority to Increase Federal Contribution for Hazard Mitigation

There are circumstances when the magnitude of a major disaster is so significant that the federal contribution under Public Assistance for repair and recover can be increased to 90 percent. It is appropriate that the same flexibility be authorized for the Hazard Mitigation Grant Program. When the cost-share for Public Assistance is changed, the same change should apply to HMGP.

E. Costs Mandated by Compliance with Federal Requirements

Some mitigation projects trigger compliance with certain federal requirements that are not related to damage reduction, such as environmental remediation, Uniform Relocation Act compliance, and others. FEMA requires that those costs be included in the cost of the project, with the end result that many otherwise feasible and cost-effective projects are not funded. The Stafford Act should be amended to clarify that such costs are eligible to be covered by the Hazard Mitigation Grant Program and the Pre-Disaster Mitigation grant program, but that such costs shall not be used to determine cost-effectiveness.

F. Independent Evaluation of State and Local Hazard Mitigation Planning Efforts

In the past ten years, more than 15,000 jurisdictions have taken part in developing and implementing local hazard mitigation plans. A provision of the Disaster Mitigation Act of 2000, mitigation planning is an effective way to systematically foster the incorporation of mitigation into many elements of a community. Currently, most local mitigation plans are being updated for the first time, and most state plans are being updated for the third or fourth time. ASFPM believes an independent evaluation of the Nation's mitigation planning efforts is necessary to better inform future program and statutory changes that may be necessary.

The ASFPM represents the federal government's state and local partners in the continuing quest to reduce flood damages and disasters. Thank you for the opportunity to provide the wisdom and expertise of our members on these important issues. For more information, please contact Larry Larson, ASFPM Executive Director (608) 274-0123 (larry@floods.org).

THE UNITED STATES CONFERENCE OF MAYORS
1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

Statement by

T. M. Franklin Cownie

Mayor of Des Moines, Iowa

before the

Subcommittee on Economic Development,
Public Buildings, and Emergency Management

Committee on Transportation and Infrastructure

U.S. House of Representatives

March 4, 2010

Chairwoman Norton, Ranking Member Diaz-Balart, and members of the Subcommittee, I am Frank Cownie, Mayor of Des Moines, Iowa. I am a member of the U.S. Conference of Mayors Stafford Act Reform Task Force, chaired by Mayor Nagin, and also serve as Chair of the organization's Metro Economies Committee. I am honored to have the opportunity to appear before you this afternoon.

Under Mayor Nagin's able leadership and that of our Vice Chair, Sacramento Mayor Kevin Johnson, our Task Force did a remarkable job of identifying the various Stafford Act provisions which caused problems for local officials trying to prevent, mitigate, and respond to disasters, and of developing recommendations intended to solve those problems. Today I would like to cover our recommendations regarding hazard mitigation and then talk a bit about our experiences in Des Moines relating to the flooding which occurred in June of 2008.

HAZARD MITIGATION RECOMMENDATIONS

Hazard mitigation measures have proven to be effective in reducing property damage, costs of repair and replacement, and loss of life. FEMA's Hazard Mitigation Grant Program provides funding to assist communities in implementing long-term hazard mitigation measures as they repair or rebuild following a disaster. Public facilities, critical infrastructure, and private homes and businesses can be retrofitted and hardened. New construction and development patterns can follow best practices to prevent the waste of future resources in repairing what could have been mitigated.

A Congressionally mandated study for FEMA estimated that $4 can be saved for every dollar spent on mitigation. More funding should be made available for hazard mitigation after a disaster, and communities that are at high risk should have more funding and financial incentives for hazard mitigation programs available to them. Additionally, the entire hazard mitigation grant process should be streamlined so less funding is lost to complex and bureaucratic administration and more can be spent on the actual construction of safer structures. Specifically, the Hazard Mitigation Grant Program should be changed to:

- Provide the President discretion to increase the federal cost share to 100 percent for hazard mitigation, as in other disaster programs;

- Direct hazard mitigation funding to the impacted community in proportion to the damage done by the event;

- Make initial hazard mitigation funding available immediately, based on the Preliminary Damage Assessment (PDA) estimates;

- Under the Stafford Act's mitigation planning provisions, allow at-risk communities to be "pre-certified" to take initiatives that follow hazard mitigation guidelines, and to be reimbursed once post-disaster mitigation funding is available;

- Allow historically at-risk communities to annually register, or self-certify, that they have in place hazard mitigation eligibility components, i.e., adopted hazard mitigation plans and model codes for building, electrical, and fire, etc. to expedite the application process during times of disaster;

- Require 75 percent of the allowable administrative costs to be provided by the grantee to the subgrantees as funding for their implementation costs or as services performed by the grantee for jurisdictions without administrative capacity;

- Increase the amount of Hazard Mitigation Grant Program (HMGP) funding by 4 percent of the estimated aggregate amount of the grant for both state and local jurisdictions that have building codes consistent with, or more stringent than, the most recent nationally recognized model building codes if adopted within six years of the most recent version of that code;

- Allow for approval of an initial conceptual HMGP application that conforms to an approved Hazard Mitigation plan but does not require significant expense on a project that may ultimately not be approved;

- Allow the development costs of detailed design, engineering, environmental work, and cost-benefit analysis components of an HMGP application to be eligible for program funding;

- Permanently adopt the Demolish-Rebuild (Pilot) Program developed after Hurricanes Katrina and Rita and make it an eligible activity under HMGP;

- Institute use of cost-effective considerations based on geographic and historical data as a substitute for cost-benefit analysis formulas to streamline the application process and speed up mitigation project completion;

- Streamline criteria for environmental review for hazard mitigation to simplify the application process and speed up mitigation project completion;

- Institute a uniform state and federal application methodology for hazard mitigation to prevent inconsistencies and delays in the approval process;

- Allow for complete hardening of a facility impacted by the event, not just the broken element;

- Allow for consideration of local fire, building, and electrical codes in reimbursement of costs for replacement or repair of a structure or its mechanicals.

OUR EXPERIENCE IN DES MOINES

In June of 2008 Des Moines was threatened by serious flooding. We discussed our experience in Des Moines with the Task Force and, as a result, it recommended that disaster assistance funds

should also be provided to reimburse costs associated with preventive measures. Stafford Act pre-event funds are provided through annual grants to assist with preparations such as hardening of structures. Reimbursement should also be provided to jurisdictions that use resources to take urgent preventive measures to mitigate the effects of potential disasters which appear to be imminent threats. These measures, which could include precautionary evacuations and target-hardening of facilities or levees, should be covered even if the path of the threatening event changes or the preventive measures successfully mitigate the effects of the disaster.

In our experience in Des Moines, a vast majority of the disaster funds were allocated to and administered by the State of Iowa. This resulted in major delays in assisting disaster victims. The State had to set up administrative procedures, hire new staff, set up new tracking systems, and establish methods of communication and reporting. Many administrative rule changes were made, and are still being made, resulting in more delay and confusion. While this administrative model may be necessary in rural and unincorporated areas, many of the areas hardest hit are Entitlement Cities experienced in administering federally funded programs such as CDBG and HOME.

- Entitlement Cities, including the City of Des Moines, already have in place the administrative procedures and systems of financial accountability needed to administer these funds. Direct allocation to Entitlement Cities, as was done during the floods of 1993, would greatly increase efficiency without compromising accountability. A direct allocation made to the City of Des Moines in 1993 resulted in disaster victims receiving needed assistance much more quickly than they would have had they been required to wait around while rules were being created at the State level. Many victims of the last disaster in Iowa are still waiting for assistance.

- Due to the funds being allocated to the State, localities have had much less control over how the funds are spent in their communities. The State of Iowa set up specific programs and allocated funding based on Federal Emergency Management Agency (FEMA) and Small Business Administration (SBA) assistance received. This allowed little discretion to decide what is most critical at the local level. In Des Moines, for example, dealing with aging infrastructure is a high priority and a significant prevention and mitigation strategy, but limited competitive funds were made available for this activity at the State level.

- Direct allocation of disaster recovery funds to Entitlement Cities would allow for expedited assistance to victims and increased local control over priorities without jeopardizing administrative or financial accountability.

- We were unable to have direct access to know who in our community received FEMA or SBA assistance. This information would have been helpful in assessing where to concentrate outreach as well as to verify the amount received for the Duplication of Benefits process that is required under the Stafford Act.

- In our experience, FEMA recipients were unaware of the specific items their funds could be spent on (e.g., home repair versus personal property, etc.) or that they needed to keep

receipts. This has been a challenge in administering other disaster relief programs because, if they didn't keep receipts or didn't spend the funds on the right things (say a washer and dryer rather than paint and drywall), recipients may not qualify for other programs or will have to pay the difference. These are low income people and it is hard for them to come up with even a couple hundred dollars. When FEMA comes out for assessments and when funds are sent, there needs to be better communication regarding what the funds can be used for and the importance of keeping receipts.

- The online system that FEMA recipients can utilize to get a copy of their FEMA awards is cumbersome and hard to use. Many applicants could not use it to get their award letter and had to call FEMA and wait up to 30 days to receive a copy. Property owners need to be given clear and complete instructions up front from FEMA concerning the applicable uses of disaster awards and how said uses may later affect their DOB.

- The assessments that FEMA did in order to award funds seem to be all over the place. We had families awarded as little as $60 when, in fact, they had thousands of dollars in repairs. We understand that FEMA is just the front line and that more assistance will be available, but many of the families in the Jumpstart program were not. Some took out payday or car title loans to pay for repairs that the FEMA funds did not cover.

- A key concept that isn't covered by the language involves coordination between FEMA and the U.S. Army Corps of Engineers (USACOE) in each and every event where both entities exercise jurisdiction. The absence of this coordination is particularly problematic for communities (not individual residents) that are told by FEMA that levee repairs, for example, are not a FEMA reimbursable expense (because they view this as a COE reimbursable expense), while the COE says the expense is COE non-reimbursable (because they view it as a FEMA reimbursable expense). Clearly, coordination that starts from the viewpoint of reimbursement to communities, without regard to the federal source of reimbursement, would be the better approach in support of local governments.

- The response time from FEMA is too slow. The floods occurred in June 2008, the final revised application was submitted in February 2009, and the grant was finally approved in April 2009. Communities should be able to obtain "pre-certification" from FEMA in order to proceed with acquisition, relocation, and demolition activities more quickly in order to assist property owners devastated in a disaster.

- The Birdland area of the City of Des Moines was substantially damaged by flooding due to a breach in the levee, but the area was not eligible for property acquisition under HMGP because it is protected by a levee. Since the Birdland area did not qualify for HMGP assistance, the City of Des Moines was forced to administer a locally funded flood buyout of 14 substantially damaged properties after the floods of 2008. The program was based on HMGP property acquisition guidelines, including acquisition, relocation, and demolition, and it was fully completed before the HMGP application process was completed. The HMGP program needs to be amended, or a different program needs to be established, to include these types of properties, as the impact on these properties was as severe as it was on properties eligible under HMGP. The

application process was tedious and time-consuming. Much of the supporting documentation should not have been necessary until after grant approval. Communities were given the option of using either of two separate BCA modules. After completing the BCA and writing the grant, the module used by our community was not the same as that used by Homeland Security. Even though either BCA module was to be allowable, our community was asked to complete the BCA using the new module, which generated new results and required a rewrite of the grant. After completing that, Homeland Security then asked our community to split the grant into two separate projects which required yet another rewrite.

- Grant administration is inefficient and overly time-consuming. After sending acquisition documents to Homeland Security in May 2009, our community was required to prepare supplemental model deed restriction documents in November 2009, after 11 of the 12 grant eligible properties were acquired. When we asked about the need, Homeland Security agreed it seemed strange, but FEMA required it anyway. This means that the City has to obtain additional signed documents from the previous owners. It seems if one document could handle the job, FEMA will require three.

- Our community had one property with ICC demolition coverage. Our initial assignment request to FEMA was sent in July 2009 and we were still waiting for confirmation of the assignment approval from FEMA in December 2009. This has taken multiple phone calls, faxes, emails, and letters from both the property owner and City staff for what should have been one simple assignment request.

- It is often difficult to understand the rules of FEMA involvement in the midst of a disaster, and it is often difficult to determine who our city should use as a FEMA point of contact having authority to represent the agency during a disaster.

Thank you for the opportunity to testify on this important matter. I will be happy to try to answer any questions you might have.

RESPONSE FROM MAYORS C. RAY NAGIN, T.M. FRANKLIN COWNIE, AND ROBERT J. DUFFY:

Question: Can you please provide the Committee examples of how greater flexibility in the open space requirement in section 404(b) of the Stafford would be beneficial especially to cities?

Answer: The Stafford Act currently limits the options for use of Hazard Mitigation Grant Program (HMGP) funds to choices that are neither practical for cities nor optimal for densely populated urban areas devastated by catastrophic destruction. The main options are elevation of the structure or public acquisition requiring removal of the structure and maintenance of the site as green space. The first option - elevation - can only occur for a structure without substantial damage (i.e. less than 50 percent of the pre-event market value of the structure itself). Thus, if a structure were substantially damaged, the only mitigation option available in current law would be for a property owner to abandon the site altogether, leaving ownership to a public agency and resulting in a vacant parcel.

The acquisition or buy out option is not practical and for several reasons is even harmful in a city or urban area with established neighborhoods. It denies the individual property owner the ability to use hazard mitigation funding to keep the property and rebuild more safely in his or her neighborhood – which may be not only well established but historic. The viability of neighborhoods and cities is threatened when jurisdictions are forced to purchase dispersed residential properties, creating a checkerboard development pattern. Acquisition also poses a double financial burden on the jurisdictions because these properties are removed from the tax base and the city must maintain these plots as green space. It also negatively affects long term viability of the community, which may already be experiencing significant population losses.

In the aftermath of Hurricanes Katrina, Rita and Wilma, which caused catastrophic destruction and affected five states (Louisiana, Texas, Mississippi, Alabama and Florida), FEMA established the HMGP Reconstruction Grant Pilot. This program provides an option to use HMGP funding for mitigation reconstruction grants, allowing an existing structure to be demolished and an improved elevated structure to be built on the same site. This pilot option has provided a workable alternative particularly for cities. Through this pilot, the City of New Orleans has been able to mitigate many substantially damaged residential properties which owners would not have been able to safely rebuild without the grant funding. In New Orleans, approximately 40 percent of the 140 total Katrina/Rita residential mitigation projects to date are pilot reconstructions, also known as "demo-rebuilds." These are properties that would not have access to standard FEMA mitigation programs that target repetitive flood loss. Many areas with high rates of substantially damaged structures (such as Lakeview and New Orleans East) never flooded before Katrina. In other locations, (such as the Lower Ninth Ward) the flooding has been infrequent but of high consequence. Because of this history, those properties are ineligible for programs that target repetitive flood losses.

Developments that are not funded through the HMGP Reconstruction Grant Pilot are also taking the demo-rebuild approach to mitigating damages. Homes being built in the Lower 9th Ward as part of Brad Pitt's Make It Right housing development are elevated and use the first level for parking. Several apartment developments also use this approach. One example is Wisdom Manor, a 30-unit affordable housing complex for senior citizens that was funded partly by the City of New Orleans. The ground level is parking and garden space and all living units are elevated.

The U S Conference of Mayors Stafford Act Reform Task Force strongly supports making this pilot reconstruction grant program a permanent and eligible activity under HMGP so that communities beyond those damaged in Hurricanes Katrina, Rita and Wilma will have an additional effective tool for recovery and rebuilding after disasters.

THE UNITED STATES CONFERENCE OF MAYORS
1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

Statement by

Robert J. Duffy

Mayor of Rochester

before the

Subcommittee on Economic Development, Public Buildings, and Emergency Management

Committee on Transportation and Infrastructure

U.S. House of Representatives

March 4, 2010

Chairwoman Norton, Ranking Member Diaz-Balart, members of the Subcommittee, I am Bob Duffy, Mayor of Rochester, New York. I am a member of the U.S. Conference of Mayors Stafford Act Reform Task Force, chaired by Mayor Nagin, and also serve as Chair of the organization's Criminal and Social Justice Committee, which has policy jurisdiction over the issues we are discussing today. I am honored to have the opportunity to appear before you this afternoon.

Before I focus on addressing disasters in cities, I want to thank the Committee on Transportation and Infrastructure and its leaders for their efforts to address the many complex transportation and infrastructure challenges before our nation.

While the debate on the surface transportation bill has shifted from a multi-year authorization to the length of an extension, the U.S. Conference of Mayors appreciates your efforts to address livability in cities and metropolitan areas in the Surface Transportation Authorization Act of 2009 by providing significant resources for sustainable modes of transportation, including high-speed rail, transit, walking, and bicycling.

We recognize that the next surface transportation bill presents an opportunity for a renewed commitment to investing in cities and metropolitan areas, and we recognize that challenges will be encountered along the way. Please know that mayors stand with members of this committee who are committed to sustainable transportation policies that reinvest in our nation's cities and metropolitan areas – the areas in which 84 percent of our people live and more than 90 percent of our future economic growth will occur.

We all owe a debt of gratitude to Mayor Nagin for the outstanding job he did as Chair of our Task Force, and to Sacramento Mayor Kevin Johnson, the Task Force's Vice Chair, for the able assistance he provided. Mayor Nagin has experienced something that I hope no other mayor will ever have to experience. We all appreciate his willingness to chair our Stafford Act Reform Task Force and to lead our efforts to identify needed reforms in federal disaster assistance. In the difficult period since Katrina, he has amassed a wealth of knowledge about what needs to be done to improve this nation's responses to disasters. Through the Task Force he has passed along that knowledge to all of us, and for that we are most grateful.

In January the Conference of Mayors adopted a policy resolution which incorporates the recommendations of the Stafford Act Reform Task Force. This means that the recommendations included in the Task Force report represent the official policy of the U.S. Conference of Mayors. Today I would like to cover several of these recommendations.

DISASTER ASSISTANCE PROGRAMS

Many programs created by the Stafford Act have limitations set by law, regulation, or policy that have caused problems and delays in the recovery of impacted communities. The requirement for grant programs to be run through the states instead of directly with cities adds an additional layer of bureaucracy and delay. Another serious impediment is the limitation on the use of grant funds to pay regular as well as overtime hours for work performed by the staff of affected jurisdictions following an event.

We believe that all disaster grant programs, including Hazard Mitigation, should be changed to give grant standing to local jurisdictions that are Community Development Block Grant Entitlement Communities so that they may deal directly with the federal government.

Further, assistance programs should be changed to cover both regular and overtime pay for the work performed by state and local public employees such as first responders, building inspectors, healthcare professionals, and sanitation workers following a disaster. The scope and scale of emergency work performed in response to a disaster is often well outside any emergency personnel's regular call of duty and should be reimbursed in the same manner as permanent work. To provide fiscal relief and reduce administrative costs, any work performed that qualifies as eligible under emergency protective measures or debris removal should be fully reimbursed, regardless of the labor category or pay rate of the employee.

INDIVIDUAL AND HOUSEHOLD ASSISTANCE

The Stafford Act should be changed to increase funding for, and improve administration of, programs to meet the needs of individuals and communities experiencing disasters as well as the host communities providing assistance. Stafford law and regulation have authorized many programs to assist people affected by emergencies and disasters, but current funding for the programs is insufficient to meet the need, and the implementation of the programs themselves needs improvement. The existing deficiencies hurt both disaster victims and the communities that host those who are evacuated.

This is a particularly acute problem in catastrophic disasters in which significant time passes before evacuees can move back to their communities. For all disasters, thorough case management handled by qualified professionals – as opposed to inadequately trained temporary workers – is essential to the success of Individual Assistance and other programs that offer help to victims. Professional case management is needed to conduct outreach, expedite claims, and maximize access to assistance in the many categories that are available, including financial, housing, employment, health, and mental health. It is needed to ensure that all eligible applicants, particularly those with special needs such as the elderly, people with disabilities, victims of domestic violence, and families with children, receive appropriate assistance. Further, changes in law and regulation are needed to ensure that host communities are made whole after providing shelter and resources for victims. The Stafford Act should be changed to:

- Create a national disaster Case Management Program which provides a comprehensive approach to disaster recovery that will ensure interagency cooperation;

- Provide qualified case management personnel trained in Individual Assistance, Other Needs Assistance, and all potential grant programs for disaster victims. It is important to educate local jurisdiction staff as well as federally funded case management workers to better advise citizens on their options to receive federal assistance and responsibilities for documenting its use. This will avoid misunderstandings and better serve the affected communities;

- Ensure that assistance for individuals and households adequately covers meals, transportation which could include multiple moves, and hotels so that evacuees will not be compelled to stay in shelters, further burdening host communities;

- Provide temporary mortgage or rental payments for individuals or families who face financial hardship caused by a disaster;

- Allow all evacuees regardless of citizenship status to be eligible for Individual Assistance so that they do not become a burden on local host communities;

- Avoid penalizing households that need to separate temporarily so that one member can return to work in the affected community;

- Provide safe and secure living accommodations for victims of domestic violence so they are not penalized for requiring separate accommodations;

- Allow for 100 percent reimbursement of affected communities and host communities for personnel costs and revenue lost in connection with managing and implementing assistance for evacuees; and

- Ensure that affected and host communities are stakeholders in the coordination of all Individual Assistance and other financial assistance programs. Due to privacy laws prohibiting the sharing of personal data, this would facilitate maximum outreach to eligible applicants and would help to verify that benefits are not duplicated.

FEMA ADMINISTRATION

There is a final recommendation I'll cover that could go a long way to improving the administration of our disaster programs: The Stafford Act and related laws and amendments should be consolidated into one code to reduce variable and conflicting interpretations and to provide clearer guidance for FEMA and communities that are working to apply disaster policy, regulation, and law in preparedness, response, mitigation, and recovery.

THE SITUATION IN ROCHESTER

In Rochester and surrounding Monroe County, we have had numerous disasters over the years that have required federal assistance. These include the ice storm of 2003, which required $16 million in Individual Assistance, $9.2 million in Public Assistance, and $76,000 in mitigation funding. While this event did not garner nearly as much national attention as disasters that have occurred in other areas of the country, it is a reminder that all disasters have the potential to create a tremendous amount of suffering and financial hardship in the communities they strike. The $16 million in Individual Assistance, for instance, aided no less than 6,400 households that were in some way affected by that storm, based on the fact that FEMA awards no more than $2,500 to each affected household. Clearly, many lives are disrupted by these disasters. This is true for all cities and metropolitan areas – those which are at particular risk of disaster because of their geographic location or other factors, and those whose risk of disaster seems to stay below the national radar. For this reason we all are obliged to do everything possible to be ready if disaster strikes. I feel as strongly as my colleagues who have experienced major disasters that the Stafford Act must be reformed. I feel just as strongly that our recommendations can help to guide that reform.

Thank you for the opportunity to testify on this important topic. We look forward to working with you to make needed improvements in the Stafford Act. I will be happy to try to answer any questions you might have.

RESPONSE FROM MAYOR ROBERT J. DUFFY:

Question: The report calls for the Stafford Act and all related provisions of law to be codified in code to provide clearer guidance for FEMA and communities after a disaster. Can you explain from your perspective why this important?

Answer: The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the federal law that supports preparation for and response to disasters. It gives the President power to issue disaster declarations that authorize help for states and local communities overwhelmed by events that have disrupted their normal functioning. Though it was written to give much discretion to federal administrations for tailoring the response to the need, the flexibility in the Stafford Act is not adequate to handle the widespread destruction caused by a catastrophic disaster, and it is not always used to make the most effective decisions after emergency events in general. Response is frequently stymied by a limiting law, bureaucratic inefficiencies and conflicting or unclear policies and regulations.

Members of the U S Conference of Mayors Task Force on Stafford Act Reform, hailing from cities of various sizes and with varied geographies, have reported that it is difficult to review just the Stafford Act, without the full set of amendments and Related Authorities. These are listed as FEMA 592, June 2007 in the current FEMA documents. There are six statutory provisions, three laws, and 15 amendments that relate to the Stafford Act. Consolidation of these provisions would eliminate unnecessary duplication and allow for easier, more consistent decision-making. Currently, when seeking an answer to a related question, one must research an inordinate amount of information just to make sure he or she is using the most current policy. Even after this, federal authorities often provide local officials with different interpretations when they try to answer a question. We believe that all related laws and information on disaster relief and emergency assistance should be consolidated.

The Conference of Mayors is not alone in making this recommendation: A 2007 report, T*he Stafford Act: Priorities for Reform*, published by The Center for Catastrophe Preparedness and Response at New York University, said that "efforts should be made to integrate portions of other laws and the National Response Plan that deal with catastrophic events into the Stafford Act to prevent conflicting and overlapping statutory requirements."

Testimony of Larry Gispert

Past President

International Association of Emergency Managers (USA)

Before the

Subcommittee on Economic Development, Public Buildings and Emergency Management

Committee on Transportation and Infrastructure

U.S. House of Representatives

U.S. Mayors Speak Out: Addressing Disasters in Cities.

March 4, 2010

Chairwoman Norton, Ranking Member Diaz-Balart and members of the subcommittee, we appreciate the opportunity to testify today.

I am Larry Gispert, the Director of Emergency Management for Hillsborough County Florida. Hillsborough County is on the West Coast of Florida and has the City of Tampa as its county seat. The county's population is approximately 1.2 million. I am a past President of the International Association of Emergency Managers (IAEM) and am testifying on behalf of the USA Council of IAEM (IAEM-USA). I have 29 years experience in emergency management with 16 as the Hillsborough County Director and have also served as President of the Florida Emergency Preparedness Association.

Statement of Larry Gispert, Hillsborough County Emergency Management, 2711 East Hanna Avenue, Tampa, Florida. 33610. Phone 813 276 2364. Representing International Association of Emergency Managers.

IAEM-USA is our nation's largest association of emergency management professionals, with almost 5,000 members including emergency managers at the state and local government levels, tribal nations, the military, colleges and universities, private business and the nonprofit sector. Most of our members are city and county emergency managers who perform the crucial function of coordinating and integrating the efforts at the local level to prepare for, mitigate the effects of, respond to, and recover from all types of disasters including terrorist attacks. Our membership includes emergency managers from large urban areas as well as rural areas.

We appreciate this Committee's strong support for emergency managers and your recognition of the importance of the Emergency Management Performance Grant (EMPG) in building capacity at the state and local level. In particular we commend your efforts to strengthen the Federal Emergency Management Agency and your insistence on the implementation of the Post Katrina Emergency Management Reform Act.

Since Hurricane Katrina a number of organizations and experts have examined the need for changes in the Robert T. Stafford Disaster Relief Act, as amended, and in Federal Emergency Management Agency (FEMA) regulations and policies. These organizations and experts have included the National Advisory Council and FEMA itself, in addition to this most recent effort by the U.S. Conference of Mayors. Opinions of these organizations and experts have differed about what needs to be changed and the level of funding required. However, it is clear that all of these voices are in unanimous agreement about the need to make sure we encourage our local communities to prepare and assist them to recover as rapidly as possible.

IAEM-USA would like to commend the U.S. Council of Mayors for the amount of work they have put into this task force and their suggestions which will encourage additional discussion.

We would like to comment on a few of the issues raised in the report.

One of the key issues of this report is a request for a catastrophic disaster designation. While IAEM-USA does not have an officially adopted position on this issue, we would encourage very careful consideration of any request to change laws and policies. It would be helpful for planners to know exactly what resources would be available and what cost shares would be waived in the case of a catastrophe. However, we believe that it is very difficult to define a true catastrophe. To some a definition of catastrophe would be devastation impacting one community or county while for others it would require a major effect on the nation. Our experience tells us that the real difference between a catastrophe and a disaster lies, in fact, in the *social impacts* associated with the event. IAEM-USA believes caution is in order when considering modification to laws, policies and authorities. I would urge caution in making statutory changes which enhance the role of the federal government (including the military) at the expense of the authority and responsibility of state and local governments even in what some would describe as "catastrophic" events.

However, if Congress does decide to define a catastrophic trigger and have additional resources available, IAEM-USA believes those provisions should be contained within the Robert T. Stafford Disaster Relief Act, as amended, and not in a separate piece of legislation.

We agree with the U.S. Conference of Mayors' recommendation to consolidate all Stafford Act related laws and amendments into one statute and that the implementing regulations of those statutes be codified in one place.

The Community Disaster Loan Program (CDL) can assist communities with lost revenue as the result of a disaster to meet operating costs. Currently, this program is capped at $5 million. We believe this cap is insufficient, but we do not have a specific suggestion on the amount of increase.

We believe that FEMA needs a strong case management program as a part of its toolkit to respond to the disaster-related needs of those impacted by the event. It is our understanding that FEMA is currently conducting an extensive pilot, reviewing lessons learned, and that they intend to develop a program.

The disaster declaration process needs to be quick and deliberate. Nothing can impede a coordinated disaster recovery so much as an overly long consideration as to whether the event is a disaster or not. While we don't recommend eliminating the provisions to protect this funding against fraud and waste, we do believe that the process should be as streamlined as possible. The recommendation of the Administrator of FEMA of a declaration of disaster should not be impeded by endless review prior to consideration by the President.

All communities would like to shorten the time from declaration to receiving funding for projects. We would urge consideration of the Cost Estimating Program for repairing, restoring, reconstructing, or replacing a public facility or eligible private nonprofit facility which was authorized in the Disaster Mitigation Act of 2000. (P.L. 106-390).

The issue of making private for profit entities eligible for Stafford Act disaster assistance raises a concern with us. We, as emergency managers, rely on our colleagues in private enterprise to protect their losses through insurance and other preparedness activities like Continuity of Operations Planning (COOP). Should our private partners not do this, we as emergency managers, will not be able to focus public resources where they are the most needed. We are concerned that if businesses become eligible for assistance under the Stafford Act, this will actually create *disincentives* for insurance and preparedness. Most emergencies at the local level do not rise to the level of a disaster declaration under the Stafford Act. So, if businesses are not prepared for a Stafford Act disaster, then they are not prepared for lesser level events. In addition, we would urge caution. Allowing one private for profit entity to become eligible would create a "slippery slope." Then the major question confronting Congress and FEMA would be where to stop.

In addition to the work by the U.S. Conference of Mayors, we would also like to make a few comments on HR 3377, the Disaster Response, Recovery, and Mitigation Enhancement Act of 2009 which was ordered reported by this committee. We urge reauthorization of the Pre-Disaster Mitigation Program as included in your bill. The current situation of one year authorizations is not good for the program. We are strong supporters and admirers of the work of National Urban Search and Rescue teams. They are a vital resource and we are aware that the Committee has addressed concerns raised by the teams. The Emergency Management Assistance Compact has been an effective system for providing trained state and local resources to affected jurisdictions and we support the authorization of grants to administer it. The State of Florida sent more than 6,200 personnel to assist Mississippi in their recovery from Hurricane Katrina. Most of those personnel came from Florida county and city governments. We were pleased to provide this assistance, and we know they stand ready to return our favor.

Any discussion of disaster recovery also must include preparedness. Preparedness in the United States rests primarily on the foundation of a strong emergency management system at the state and local level. However, many local governments are finding maintaining an independent emergency management agency to be difficult and they are assigning these duties to other agencies that are already overburdened with existing responsibilities. Emergency management is not a part time job regardless of the size of the community. Every community needs a professional emergency manager constantly planning, training, exercising and thinking how to deploy whatever resources are available or how to integrate help from other jurisdictions if needed. When this responsibility is relegated to another agency, planning suffers from lack of attention. The emergency management system will only work if all four levels of government—city, county, state, and Federal are capable of quickly applying the resources necessary to resolve the issues. If any one of these vital links in the chain is weak or broken, the community's response and recovery will be severely impacted. We must work to make sure all our partners at the local level have strong programs or are covered by strong programs.

In Florida, we say, "The first 72 is on you," because we know one of our responsibilities as local government is to make sure that our citizens are prepared for emergencies and disasters. The preparedness of communities is based on the preparedness of individuals. This is, perhaps, the weakest link in our preparedness effort. We believe, in most cases, the majority of people can take care of themselves and their families – perhaps even their neighbors – for the first 72 hours or three days after a disaster – if they plan. That planning is what allows those with the statutory responsibility for coordinating local mitigation, preparedness, response, and recovery efforts – emergency managers – to focus on those who have greater needs or are not able to provide for themselves when their support networks are disrupted during a disaster.

It is also vital that all levels of government provide information to citizens to allow them to understand what actions are reasonable to expect from their authorities in a disaster. In the absence of reasonable information, unreasonable expectations are formed and post-disaster frustrations rise. Regardless of the economic downturn, local citizens expect local government to

continue to respond to all emergencies and disasters. It is well known that it takes people and money to properly respond to such events.

Outside of the strictly catastrophic setting, it continues to remain important for State and local governments to have a stake – some "skin in the game" – in terms of their own funding to prepare for, respond to, mitigate, and recover from local disasters. This has the additional benefit of making all of members of the team responsible for jointly setting recovery priorities as well as minimizing fraud, waste and abuse of these funds.

Again, we appreciate this Committees' support for strong emergency management, and I will be happy to answer any questions you may have.

Contact Information:

International Association of Emergency Managers
201 Park Washington Court
Falls Church, VA. 22046.
Telephone: 703 538 1795. Website: www.IAEM.com

Elizabeth Armstrong, Executive Director, armstrong@iaem.com

Randy Duncan, Government Affairs Chair, rduncan@sedgwick.gov

Martha Braddock, Policy Advisor, braddock@iaem.com

MR. DAVID MAXWELL

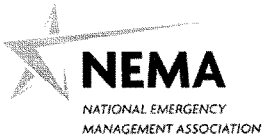
Director & Homeland Security Advisor
Arkansas Department of Emergency Management
President, National Emergency Management Association

TESTIMONY

Before the House Transportation & Infrastructure
Subcommittee on Economic Development,
Public Buildings and Emergency Management

U.S. Mayors Speak Out: Addressing Disasters in Cities

March 4, 2010



National Emergency Management Association
Hall of the States
444 North Capitol Street, NW
Washington, DC 20001
(Ph) 202-624-5459

Testimony of Mr. David Maxwell
Arkansas Department of Emergency Management
March 4, 2010

Introduction

Chairwoman Norton, Congressman Diaz-Balart, and members of the Subcommittee, thank you for the opportunity to testify today. I come before you representing the National Emergency Management Association and the emergency managers of all 50 states, territories, and Washington, D.C.

As the Committee considers H.R. 3377, we continue to appreciate the Committee's swift action on this critical legislation and hope the bill will be quickly approved in order to strengthen emergency management capabilities across the country. You and your staff are to be commended for the work you have done thus far.

The Stafford Act

The Stafford Act stands as the pinnacle piece of legislation affecting the emergency management profession. The original Act was intentionally written in a broad manner to allow maximum flexibility for practitioners and discretion by the President. NEMA continues to support this flexibility. In recent years, however, we have experienced reduced flexibility through unnecessarily strict interpretations of the law. These interpretations have led to more rigid regulations and policies not accurately reflecting the true intent of the Act. A majority of NEMA members agree the primary issue during disaster response rests not with the Stafford Act overall, but rather with disaster assistance policy.

Fortunately, FEMA leadership has recently taken strides to address previous policies and regulation interpretations. We applaud FEMA's efforts and wish to allow them appropriate time to complete their full review. This current policy review will surely drive any potential need for more broad-reaching Stafford Act changes in the future. While NEMA continues to place trust in FEMA leadership during this review process, we continue a doctrine of "trust but verify" and intend to advise accordingly.

Discussions continue within NEMA regarding whether or not the Stafford Act requires amending to address catastrophic disasters, but we remain steadfast in our belief the Stafford Act does not require broad and sweeping legislative changes at this time. Regardless of when and if the major changes are ever considered to the Stafford Act, one issue behind which NEMA stands unified is the necessity for state governments to remain the sole source of entry for Federal assistance into the states.

When devastation at the hand of a disaster occurs, it remains the responsibility of Governors and state governments to support communities by ensuring a seamless disaster response among all levels of government. State responsibility also includes the provision of resource coordination in a timely and efficient manner, interstate mutual aid as necessary, and state and federal disaster assistance programs appropriately implemented.

While NEMA would prefer not to see the Stafford Act significantly amended at this time, the imperative of reauthorizing aspects of the Act remains. Specific provisions within H.R. 3377, currently before your Committee, achieve such reauthorizations and NEMA supports many of them.

Recommendations for H.R. 3377

Despite remaining questions about the breadth of future Stafford Act amendments, NEMA remains supportive of many provisions within H.R. 3377. Overall, flexibility within Stafford programs and maintaining state leadership as the primary coordination point for assistance remain NEMA's highest priorities.

Section 101 of H.R. 3377 specifically addresses the Pre-Disaster Mitigation Grant Program. A lack of authorizing language and unnecessary earmarks stand to weaken this critical emergency management program. While the 2010 appropriation for DHS reauthorized PDM for one fiscal year, the program is in desperate need of a multi-year reauthorization. NEMA continues work

with Senate authorizers to introduce companion legislation, but the swift passage of this provision will allow PDM to remain strong well into the future.

In September of last year, Richard Muth of Maryland, a member of NEMA, testified before this committee regarding the importance of the Integrated Public Alert and Warning System (IPAWS). NEMA supports the reauthorization of IPAWS through H.R. 3377 as the program remains a valuable tool for state and local government warning functions. The Association membership also appreciates the inclusion of state and local government emergency managers in the IPAWS Modernization Advisory Council Committee outlined in this legislation.

Another NEMA member, Matt Bettenhausen of California, also testified before this Committee regarding the importance of support to Urban Search and Rescue Teams in this bill. H.R. 3377 makes significant strides toward addressing USAR issues by providing FEMA clear authority for USAR and protecting the local department and task force members when injuries or other liabilities occur as a result from their rescue efforts and NEMA supports this provision. Without the protections provided in this legislation, the local and state departments supporting the USAR Task Forces face potentially unfunded costs for sustaining these teams.

One of NEMA's legislative priorities for 2010 will be the reinstitution of the Public Assistance (PA) Pilot Program and H.R. 3377 offers a logical opportunity for this program. The PA Pilot Program ended on December 31, 2008, pending a report by FEMA to Congress. FEMA officially submitted the required report on May 20, 2009. During the program period, 3,965 applications in 78 disasters participated in at least one procedure of the Pilot Program. The PA Pilot Program was not an independently funded grant program, but rather a means by which to disperse funds from the Disaster Recovery Fund (DRF). Using H.R. 3377 to restart this program will provide states added flexibility in responding to Stafford declared events.

NEMA also appreciates the broad authorization language of the DRF in H.R. 3377 and will continue to encourage appropriators to provide the DRF enough funds to avoid cumbersome supplemental requests throughout the fiscal year.

Finally, NEMA is very pleased with how H.R. 3377 addresses reauthorization of the Emergency Management Assistance Compact (EMAC) in Section 302. When states and U.S. Territories joined together and Congress ratified EMAC (Public Law PL-104-321, 1996), it created a legal and procedural mechanism whereby we can quickly move state owned emergency response resources, like USAR, throughout the country to meet disaster needs. All 50 states, the District of Columbia, and three territories are members of EMAC and have committed their emergency resources in helping neighboring states and territories.

To provide a sense of EMAC's value in the context of search and rescue, in 2005 the year of Hurricanes Katrina, Rita, and Wilma more than 1,300 search and rescue personnel from 16 states searched more than 22,300 structures and rescued 6,582 people. EMAC staff stood ready to offer support as recently as this past weekend during the tsunami threat to Hawaii. Fortunately the need for mutual aid was never required in Hawaii, and our thoughts and prayers go out to those affected by the earthquake in Chile.

The capabilities of EMAC remain sustained by the efforts of all the states and would be bolstered by a reauthorization of EMAC. Also, while EMAC currently receives FEMA grant funding, fulfilling NEMA's request for a $4 million line item appropriation would codify the program for use in future disasters. In my opinion, $4 million in federal funds stands as a minimal investment for maintaining a proven national emergency response capacity that day-to-day is equipped, trained, and ready to provide critical disaster response resources and support between states.

Conclusion

Overall, NEMA remains pleased with the current structure and outline of H.R. 3377, and discourages broad and sweeping changes to the Stafford Act. Should legislative changes become necessary in the future, implementation at the state level should stand as the single most important undercurrent to any recommended Stafford amendments.

I welcome any questions you may have, and NEMA will continue offering support to this Committee and your staff as H.R. 3377 continues to move forward in the process.

QUESTIONS SUBMITTED FOR THE RECORD BY
THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

NATIONAL EMERGENCY MANAGEMENT ASSOCIATION
Testimony Presented March 4, 2010

David Maxwell
President, National Emergency Management Association (NEMA)
Director, Arkansas Department of Emergency Management and Homeland Security Advisor

Question: The Mayor's report calls for cities in certain circumstance to become direct grantees of FEMA for the Public Assistance program and the Hazard Mitigation Grant Program. Do you agree with this recommendation? If not, why do you believe that states should be the grantee for Federal Disaster Assistance?

Answer: Numerous issues arise when considering the authority of cities to become direct grantees of the FEMA Public Assistance (PA) and Hazard Mitigation Grant Programs (HMGP). Problems such as significant delays, loss of expertise and coordination, and significant administrative burdens for cities stand as baseline concerns of direct assistance.

Acting as a grantee requires specific skill sets already resting at the state level. For example, grantees must submit a Federal Emergency Management Agency (FEMA) approved administrative plan for both PA and HMGP; manage projects; review HMGP applications; process payment requests; manage audits, and conduct project closeouts. The cost both financially and in required personnel would make these programs impractical to implement at the local level. Also, experience in managing numerous disasters afford states the opportunity to provide a more consistent application of grant rules on a statewide and regional basis.

Authorizing local jurisdictions as direct grantees would create an undue administrative burden on FEMA. FEMA would need to establish multiple accounts for each disaster rather than the single funding account currently at the state. There would also be an increase in the number of direct appeals to FEMA which would further add management requirements. While the end-goal may be to expedite project approvals, appointing local jurisdictions as direct grantees would actually slow the process and have the opposite effect.

In the event of a disaster, much of the work eligible for reimbursement is often performed by agencies of the state government. States coordinate disaster relief not only for all local governments within their borders but for state agencies as well. If cities request reimbursement directly from FEMA, substantial issues would remain in de-conflicting requests for reimbursement. Providing direct assistance to local jurisdictions would also diminish regional planning and mutual aid efforts already established between the states as no systematic approach to the equitable and efficient distribution of essential goods and services would remain.

Finally, many state laws and regulations mirror the Stafford Act so states would be required to revise their laws and regulations accordingly in addition to the added expense of reprinting significant publications. Such an effort would create an undue burden on state budgets already strained in the current economic climate.

Statement by

C. Ray Nagin

Mayor of New Orleans

before the

Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure

U.S. House of Representatives

March 4, 2010

"U.S. Mayors Speak Out: Addressing Disasters in Cities"

City of New Orleans
1300 Perdido Street
Suite 2E04
New Orleans, LA 70112
504-658-4010

Statement by
Mayor C. Ray Nagin
City of New Orleans
Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
U.S. House of Representatives
2167 Rayburn House Office Building
March 4, 2010

"U.S. Mayors Speak Out: Addressing Disasters in Cities"

To Chairwoman Eleanor Holmes Norton, Ranking Member Mario Diaz-Balart, and to all distinguished members of the subcommittee, my fellow panel members Mayor Frank Cownie and Mayor Robert Duffy, other panel members and guests:

I am C. Ray Nagin, Mayor of the City of New Orleans. New Orleans is one of the most famous cities in the world. It also is one of America's most beloved and culturally distinctive cities, and one which is of strategic importance because of its port system and its role in the energy, cultural production and seafood production industries. New Orleans is rebuilding following the devastation of Hurricane Katrina and the flooding that followed. Although the complicated maze of federal laws, regulations and policies and their implementation have led to major delays in our recovery, we are now creating a city that will be even better than it was before.

Much has been said about the lessons learned from the catastrophic disaster that New Orleans experienced, yet the structure under which we have struggled to recover remains largely unchanged today. Any city that faces a catastrophic disaster in the future will face the same challenges that we have had to overcome to rebuild New Orleans.

Thank you, Congresswoman Norton, for the opportunity to discuss needed reforms to the Robert T. Stafford Act. Thank you, also, for all that you have done to support New Orleans since Hurricane Katrina, and to help better prepare the country to respond to and recover from disasters. Many of the special one-time fixes that gave relief to New Orleans following the 2005 storms began with this subcommittee under your leadership, and you have also been a leader in initiating positive permanent changes to Stafford. You and your committee have championed our needs in New Orleans and those of all cities through your efforts to bring about long term changes in our disaster response system.

You've had some important partners in your efforts: I also want to take a moment to thank President Obama's Administration and other key leaders in Congress who have worked to improve disaster response and recovery since the catastrophic events in New Orleans demonstrated the need so clearly. Congress has provided special legislative relief to the Gulf Coast, and begun to direct change for the future. The Obama Administration has brought fresh perspective to Gulf Coast recovery on a day-to-day basis, and is working to strengthen disaster recovery for the nation through efforts such as the recently

established Long Term Recovery Working Group of key administration officials. While these changes have been critically important to us, the overall structure of our disaster response policies and legislation still remains in need of overhaul.

One of my goals throughout our recovery from Hurricane Katrina has been to share what we have learned to help make sure that no other American city ever has to experience the difficulties that we have in New Orleans. Because disaster response and recovery is important to every city, the U.S. Conference of Mayors (USCM) asked that I lead a task force to formulate comprehensive recommendations for reforming the Stafford Act and how it is implemented.

Working with my co-chair, Sacramento Mayor Kevin Johnson, and with the participation of mayors, emergency managers and other staff from cities around the country, we have outlined a comprehensive set of reforms. These recommendations were presented to and approved by the USCM in January. A copy is attached to my written statement.

Our Task Force is comprised of cities that reflect wide geographic and risk diversity. Some have experienced disasters themselves; others have been host cities to citizens from communities that experienced them or offered their assistance to a disaster affected community. Sacramento has been identified as being one of the cities most at risk of catastrophic flooding. All of our cities recognize the urgency of ensuring that our country has put in place the resources and tools needed – after the lessons learned over the past few years – to support efficient and effective preparedness, response, mitigation and recovery in any community hit by a disaster.

The report, which is submitted in its entirety as an attachment to this testimony, includes recommendations that cover catastrophic disaster designation, hazard mitigation, individual and household assistance, insurance, other disaster grants, emergency preparedness and response and FEMA administration.

Congresswoman Norton, we also are very appreciative that you introduced HR 3377 "Disaster Response, Recovery, and Mitigation Act of 2009," which would make some key changes in the Stafford Act – many of them changes which our Task Force report recommends. These include:

- Providing additional Hazard Mitigation funding to states and communities that are enforcing the most recent version of a nationally recognized model building code.

- Providing temporary mortgage and rental payments to individuals and families who are at risk of losing their homes because of the disaster.

- Enhancing case management capabilities under FEMA for survivors of disasters – a change that would help entire communities recover faster. We applaud your emphasis on helping the most vulnerable – children and individuals with disabilities.

- Improving cost estimation procedures to determine the level of damage to facilities to expedite recovery and, in the long run, save money.

- Reviewing of regulations and policies to simplify and expedite disaster recovery and assistance.

- Calling for the establishment of overdue criteria for hazard mitigation administration – something we hope will incorporate many of our suggested reforms in our report.

- Establishing Presidential authority to trigger "special procedures" in cases of "extensive and widespread damage" – a provision similar to our call for a catastrophic designation.

I must acknowledge that reforming the Stafford Act and FEMA is not the highest priority for many in Congress right now. We must ask, however, if when the next disaster strikes in the United States – and we know it is not a question of if but when – will we have taken steps to improve our disaster system based on the lessons learned from Hurricane Katrina? Not enacting needed Stafford Act reforms will demonstrate that we have ignored those lessons, and the next city struck by a major or catastrophic disaster will face the same struggles we have faced in New Orleans.

I realize that this is a short legislative session and that Congress is dealing with major concerns such as a jobs bill, the FY 2011 appropriations bills, healthcare bills and the budget. But while it may not be as visible, Stafford Reform is of critical importance to every American city and the entire country. The devastation in Haiti and the even more recent disaster in Chile are reminders that no area is immune.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the federal law that supports preparation for and response to disasters. It gives the President power to issue disaster declarations that authorize help for states and local communities overwhelmed by events that have disrupted their normal functioning. Though it was written to give much discretion to federal administrations for tailoring the response to the need, the flexibility in the Stafford Act is not adequate to handle the widespread destruction caused by a catastrophic disaster, and it is not always used to make the most effective decisions after emergency events in general. Response is frequently stymied by a limiting law, bureaucratic inefficiencies and conflicting or unclear policies and regulations.

This testimony focuses on five areas of great concern to both the City of New Orleans and USCM and summarizes some of the recommendations of the report. Those key areas are Catastrophic Disaster Designation; Removal of the $5 million Cap on Community Disaster Loans; Direct Grant Funding to Cities; Adequate Funding For and Streamlining of Hazard Mitigation; and Full and Timely Cost Reimbursements for Host Cities.

Catastrophic Disaster Designation

Recommendation: ***Provide for catastrophic disaster designation to speed up funding availability and recovery***

One of the major barriers to our recovery from Hurricane Katrina has been the lack of differentiation among disasters and the inability to designate those that are "catastrophic" and cause extensive and widespread damage and destruction. Events such as Hurricane Katrina are so great in scope and effect in more than just a local jurisdiction or region that they require special consideration for the response and recovery efforts. Unlike disasters which strike a limited area within a city, Hurricane Katrina left 80 percent of New Orleans under water and caused tens of billions of dollars in damages. For example, the damage to the New Orleans Recreation Department facilities alone totaled more than $60 million, and more than 300 city facilities were either severely damaged or destroyed. In addition, more than 100,000 housing units were destroyed in the City of New Orleans. The damage to other parishes in the region was also severe in some cases. The entire economy of the United States was affected by the event.

The Stafford Act should be amended to differentiate "catastrophic disaster" as one which has a more devastating impact than a "major disaster." Catastrophic events are currently defined in the National Response Framework as "any natural or manmade incident, including terrorism that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions." A formula should be developed to determine if a disaster meets the criteria for catastrophic designation.

The Catastrophic designation would trigger "special procedures" similar to the concept of "extensive and widespread damage" as in HR 3377 to give the President authorization to expedite the repair, restoration, reconstruction or replacement of eligible facilities. While we believe this would be a valuable addition, we propose a catastrophic designation that would trigger a number of additional actions, as outlined in the USCM report. Among those actions are the following:

- Give the President the authority to waive Stafford Act provisions and regulatory compliance following a catastrophe;

- Provide automatic 100 percent federal funding for all categories of eligible work for the duration of a disaster. Because the Stafford Act requires cities to pay a portion of the cost of emergency services, such as debris removal, we began seeking 100 percent funding for these costs immediately after the storm. This funding was necessary in order to assure that we could meet these needs, despite our depleted budget and non-existent economy. In a special Katrina and Rita fix, Congress approved 100 percent funding for eligible costs but not until May of 2007. This special relief would not be in place for a future catastrophic event.

- Mandate the immediate release of federal funding for 50 percent of the Preliminary Damage Assessment (PDA) estimate for all grant programs. Currently it can take 60 to 90 days to access "Immediate Needs Funding" and it is not available for initial recovery work on critical infrastructure, including public

safety facilities and equipment. In devastated cities, there is no money available to sustain operations and other costs while waiting for this period. This leads to unnecessary layoffs and delays in contracting that leaves the municipalities unable to move forward with critical services.

- Establish a 90-day "hold harmless" period for the procurement of goods and services at the beginning of a disaster so that local and state governments can respond quickly to meet urgent needs. Charleston Mayor Joe Riley told us that after Hugo when Charleston needed generators, FEMA said they hadn't done an assessment. While FEMA now encourages pre-disaster contracting for anticipated needs, Mayor Riley believes that there should be a hold harmless period for unforeseen urgent needs, pointing out that in catastrophic disasters especially, every second counts.

- Lengthen and align deadlines for all grant categories for a minimum of one to five years based on the requirements of the grant program. For example, Emergency Work should be extended to one year and Hazard Mitigation should be extended to a minimum of five years to allow the affected communities time to plan, recover, and rebuild. Then after the initial period of stabilization, extensions can be applied if needed.

  In New Orleans, much time and energy was spent to keep track of short term deadlines immediately after Hurricane Katrina struck and when the city was still in a dire emergency situation. The extent of the destruction meant we needed extensions that amounted to years for debris removal and other emergency services. Each time a deadline approached, we had to reapply and then wait for a response, uncertain whether the extensions would be approved or if we would have to discontinue our emergency operations. There are still deadlines on many programs and issues that we are coming up against that may make sense under normal emergency and major disaster circumstances, but not in catastrophic events.

- Assure that all modalities of mental health treatment (in addition to Crisis Counseling Assistance and Training) are available and funded to provide psychiatric services and medications to the affected population. In catastrophic events, the personal lives of huge segments of the population are in crisis; damage to the basic health and mental health infrastructure will prevent adequate help from being provided to meet the severe and prolonged mental health needs in the affected communities. Mental health services also need to be provided to long-term evacuees in their host communities.

  The flooding in New Orleans had a crippling effect on the city's healthcare and mental health infrastructure. Though mental health counseling was covered, longer-term mental health care and medications provided by doctors in emergency clinics or in host cities were not eligible for reimbursement as eligible costs of disaster assistance. It is clear that at some point the community must again

assume the costs of providing health care, but the extent of the destruction in a catastrophic events means the "emergency" period and the seriousness of the effects are much longer. New Orleans is still experiencing the negative effects of the catastrophe and the need for mental health services has increased dramatically. Incidents of suicides and attempted suicides are at an all-time high; police are transporting more mental patients in crisis; and the World Health Organization has documented severe levels of depression.

Community Disaster Loan Program

Recommendation: ***Remove the $5 million cap on the Community Disaster Loan (CDL) program – the amount available for loan funds should match the amount of revenue lost. Decisions on loan repayment or cancellation can be made after clear analysis of a jurisdiction's ability to pay back the loan in part or in full without undue hardship.***

Hurricane Katrina and the extent of the destruction forced the complete shut-down of the New Orleans economy. As a historically poor city, we did not have major reserves to which we could turn to continue our basic operations. Even cities wealthier than ours would find that a complete economic shut down seriously impedes its ability to function. We were not sure how we would make payroll so that we could to employ the people needed to continue search and rescue operations and begin the clean up and recovery process. We were also concerned about defaulting on public bonds and the subsequent damage to our credit rating. Unfortunately, the main operational relief offered by Stafford is the Community Disaster Loan program, which is not only slow but inadequate for a major American city that has experienced a catastrophic disaster. Its $5 million cap and limit of up to 50 percent of revenue loss means that a community in the throes of an emergency must wait for the slower processes of legislative relief to have a reasonable amount of funding made available.

In early September of 2005, with the flood waters still covering most of our city, we began to request immediate funding for these and other costs. With no immediate resources available, we were forced on October 4, 2005, to lay off 3,000 employees, approximately half of our workforce. Not only could many of these performed valuable roles in our recovery process, but many also were dealt the double blow of losing their homes and their jobs. The cuts also meant that our remaining employees were asked to perform the work of two to three people, a reality that continues today in much of City government.

Through Congressional legislation in October of 2005, the $5 million cap on the Community Disaster Loans was lifted for Katrina and Rita, but Presidential discretion for forgiveness of these special loans also was taken away. In October of 2006 – over a full year after the event -- Congress provided the City and other affected entities the authority to borrow up to 50 percent of annual revenue loss for operating. Then, in May 2007, Congress reinstated the President's discretion to forgive the loans.

Under normal CDL processes, the City of New Orleans would have been able to apply for forgiveness in January 2009, which would have been three full fiscal years following the disaster. However, because the loans we received were considered "special" and outside the regular provisions of the Stafford Act, there were no rules in existence for this forgiveness. Rules were written and promulgated a few weeks ago and the City of New Orleans is now in the process of applying for forgiveness. We are confident that this forgiveness will be granted because our needs are so great in comparison to need stemming from other disasters that have been forgiven. In the future, however, no communities should have to walk the financial tight rope mandated by these limitations on funding. If they do they will lose valuable time and energy that should be used in stabilizing and rebuilding their city.

Direct Funding for Cities

Recommendation: Give grant standing to local jurisdictions that are CDBG Entitlement Communities -- ***Local governments that are Community Development Block Grant entitlement communities should have standing as grantees for all disaster grant programs so that they may deal directly with the federal government.***

Mayors are on the front lines of efforts to mitigate, respond to and recover from disasters. Our residents look to us for speedy action and for reassurance that their lives and communities will quickly return to normal. Yet, current law denies us the ability to access federal resources directly, requiring instead that we work through state governments, which are often grappling with their own disaster response efforts. We are left in the impossible position of being responsible to our constituents without having the authority or resources to adequately respond to their needs.

New Orleans could serve as a case study on the negative impacts of using states as intermediaries between the federal government and local communities for disaster recovery funding. Having to go through the state to request extensions, project worksheet approvals and reimbursements for disaster grant programs slows down funding, adds unnecessary bureaucracy and impedes recovery. In the past, the State of Louisiana also engaged in a system of pre-audits that significantly slowed access to funding. Despite the best of intentions, the additional bureaucracy at the State level meant that citizens – the people most impacted – had even longer waits before they would see community improvements implemented.

We have had similar experiences with the Long Term Recovery Disaster Community Development Block Grant (D-CDBG) funds that have gone through the state. The City of New Orleans, which received 57 percent of the damage from Hurricanes Katrina and Rita, has been granted only $411 million in Disaster Community Development Block Grant funds out of the billions of dollars Congress appropriated for Gulf Coast recovery. We have programmed all of that funding and are currently in the process of implementing programs to draw it down. More than $1 billion in unspent recovery funds, however, remain in the State of Louisiana's coffers. We contend that these funds would best be

used at the local level and should be distributed proportionately based on damages, consistent with Congressional intent.

The possibility of natural and man-made disasters in other cities means that this is an issue that Congress likely will face again. Our citizens will be best served if the dollars are immediately available at the level of government closest to them – the city government level. This will allow the speedy action residents expect and deserve. In the process, the costs of providing these grants will be greatly reduced with the elimination of the additional level of bureaucracy.

Hazard Mitigation Grant Program

Recommendation: ***Adequately fund and streamline the Hazard Mitigation Grant Program***

Hazard Mitigation is an important part of any recovery because it has proven to be effective in reducing property damage, costs of repair and replacement, and loss of life. The Federal Emergency Management Administration's (FEMA) Hazard Mitigation Grant Program (HMGP) provides funding to assist communities to implement long-term hazard mitigation measures as they repair or rebuild following a disaster. Public facilities, critical infrastructure, and private homes and businesses can be retrofitted and hardened with the grant dollars made available after a disaster. New construction and development patterns can follow best practices to prevent the waste of future resources for repairing what could have been mitigated. A Congressionally mandated study for FEMA estimated that $4 can be saved for every dollar spent to mitigate.

Many cities have called for changes in the Hazard Mitigation Grant Program. More funding should be made available for hazard mitigation after a disaster and there should be more funding and financial incentives for hazard mitigation programs in communities that are at high risk. The funding must be available more quickly and should be awarded directly to cities with a proven capacity to administer them – Community Development Block Grant entitlement communities. Additionally, the entire hazard mitigation grant process should be streamlined so that less funding is spent on complex and bureaucratic administration and more on the actual construction of safer structures. Some of these changes can be accomplished administratively, and the Obama administration is working on some of these issues. Some changes require legislative action.

Louisiana has been allocated about $1.5 billion for 404 Hazard Mitigation for Hurricanes Katrina and Rita. New Orleans, which experienced 57 percent of the damage in Louisiana, has been officially awarded $30 million for disaster-specific FEMA grants. It is expected that the amount will increase to approximately $60-70 million. Applications for these grants were developed with help from FEMA and the State of Louisiana, but the rules are so complex that huge grant proposals requiring reams of paper had to be submitted multiple times before they were awarded, with most of these awards being made just last year in 2009.

Among the recommended changes to the program, which are essential to saving future costs, property, and lives:

- Provide the President with discretion to increase the federal cost share to 100 percent for hazard mitigation, as in other disaster programs. This is particularly important for communities that have experienced catastrophic destruction where neither the agencies nor the residents are able to financially afford the match but have great need and opportunity for mitigation.

- Direct hazard mitigation funding to the impacted community in proportion to the damage done by the event. New Orleans has received less than its proportionate share of grant dollars and has had to compete within the state for funding beyond the original allocation offered .by the state.

- Make initial hazard mitigation funding available immediately, based on the Preliminary Damage Assessment (PDA) estimates. Cities across the country have noted that the program is too slow. By providing dollars immediately based on PDAs, communities will be able to more quickly help their citizens who are trying to make critical decisions about their homes and lives, and will be able to invest in mitigation measures more expeditiously.

- Require 75 percent of the allowable administrative costs to be provided by the grantee to the subgrantees as funding for their implementation costs or as services performed by the grantee for jurisdictions without administrative capacity. If a city is funded through the state for HMGP, it should receive a reasonable amount of the administrative funding to effectively implement and monitor the program. One recent grant to the City of New Orleans was awarded with an administrative allowance of less than one per cent, which is not enough to administer and monitor appropriately.

- Increase the amount of Hazard Mitigation Grant Program funding by 4 percent of the estimated aggregate amount of the grant for both state and local jurisdictions that have building codes consistent with or more stringent than the most recent nationally recognized model building codes if adopted within six years of the most recent version of that code. States and communities should be rewarded for adopting and enforcing safer building codes.

- Permanently adopt the Demolish-Rebuild (Pilot) Program developed after Hurricanes Katrina and Rita and make it an eligible activity under HMGP. Current law favors that demolished property be bought out and turned into green space permanently, which is not practical in the middle of cities. The pilot allows mitigation funds to be used for rebuilding safely on a lot where a damaged structure has been demolished. This pilot program should become permanent law.

Increase Support for Communities Hosting Evacuees and Cities that Provide Direct Assistance to Disaster Affected Communities

Recommendation: ***Allow for 100 percent reimbursement for affected communities and host communities for personnel costs and lost revenue incurred to manage and implement assistance for evacuees.***

In the wake of disasters, neighboring communities and those in other states incur extraordinary costs for providing housing and support to displaced disaster victims, as well as by sending assistance to the community experiencing the event. Their efforts should be applauded, not penalized. Federal dollars must flow more quickly to compensate these communities for the full cost of their efforts.

Fort Worth, Texas provides an excellent example of how host cities are being impacted by the current law and regulations. The State of Texas has designated the Fort Worth/Dallas Metroplex as the host area for Harris County (Houston) citizens who evacuate in the event of a hurricane. Whenever Fort Worth operates shelters, it incurs significant expenses in permanent employee straight-time salaries. However, under current law, only overtime spent on disaster response by permanent employees is eligible for reimbursement from FEMA. In the case of Fort Worth, these straight-time expenses are borne by its citizens, thus putting the City in the position of underwriting the costs for people who live on the coast, hundreds of miles from Fort Worth. During Hurricane Katrina and Hurricane Gustav, Fort Worth was asked to shelter evacuees from Louisiana as well as from the Texas coast.

In addition to these costs, host cities also incur revenue losses when they have to close revenue generating facilities in order to accommodate and house evacuees. To make serving as a host city more attractive and equitable, the Stafford Act should be revised to reimburse host jurisdictions for 100 percent of their lost revenue for facilities such as convention centers that are used as mass care shelters.

Host cities that participated in the work of the task force concur that it would be best for the funding to come from FEMA directly to cities rather than through the state. In late 2009, Dallas was still awaiting reimbursement from the State of Texas for host city expenses it incurred a year earlier during Hurricanes Gustav and Ike. This could be expedited by granting host cities direct standing as grantees with FEMA, rather than requiring the cities to apply to the state as an intermediary, with the state subsequently applying to FEMA.

Recommendation: ***Facilitate expeditious direct reimbursement to cities that provide mutual aid by:***

- Authorizing city-to-city and/or state-to-state mutual aid agreements to immediately trigger funding and liability protection during major or catastrophic emergencies without having to wait until a formal disaster is declared and

assistance is granted through the Emergency Management Assistance Compact (EMAC) system.

- In the event of a federal declaration of emergency, reimbursing costs associated with emergency protective services through mutual aid assistance from the time at which the state declared the emergency.

Recommendation: ***Honor certifications and licenses across state lines – Since the provision of regional mutual aid will frequently require emergency service professionals to perform duties outside the boundaries of their home states, state-based professional licenses or certifications should be honored across state lines in the event of a disaster or emergency event.***

- Reimbursement for eligible costs incurred in providing mutual aid must be quicker and less bureaucratic in order to encourage more critically needed cooperation without penalizing those who want to help. Federal assistance with coordination across state lines and regions would encourage more cooperation.

Thank you, again, for your focus on this important issue and for the commitment that you have demonstrated to our city. Despite the challenges we have faced, New Orleans is rebuilding and will be a stronger, smarter and better city than ever before.

As I prepare to leave office in May, I remain as committed as I was just after Hurricane Katrina to making certain that no other city faces the recovery and rebuilding difficulties that we have in New Orleans. It has been my honor to lead the task force on behalf of the U.S. Conference of Mayors. Our recommendations are based on actual experiences and actual frustrations in working within a structure that must be overhauled to better serve the American people. Reform of the Stafford Act is critically important to the future of our cities and our nation.

REPORT OF THE STAFFORD ACT REFORM TASK FORCE

JANUARY 2010

C. Ray Nagin, Mayor of New Orleans, Chair
Kevin Johnson, Mayor of Sacramento, Vice Chair

The United States Conference of Mayors

The United States Conference of Mayors

Elizabeth B. Kautz
Mayor of Burnsville
President

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Mayor of Los Angeles
Vice President

Tom Cochran
CEO and Executive Director

STAFFORD ACT REFORM TASK FORCE

C. Ray Nagin
Mayor of New Orleans
Chair

Kevin Johnson
Mayor of Sacramento
Vice Chair

This report may be downloaded at The U.S. Conference of Mayors Web site, www.usmayors.org.

CITY OF NEW ORLEANS
C. RAY NAGIN, MAYOR

January 2010

An Open Letter to the President and the Congress

Every city in our nation is vulnerable to disaster. Whether it is natural or man-made, our cities and their leaders must be prepared to respond when events occur that threaten human life, property, and the economic viability of our communities.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the primary federal statute that guides the nation's response to natural and man-made disasters. Though it is intended to provide great flexibility to the agencies directly interacting with affected communities, the responses to Hurricane Katrina, Hurricane Rita and subsequent natural disasters have highlighted the inadequacies of the law and the need for greater flexibility in some areas and stricter requirements in others. City leaders need the assurance that, as they work to prepare for and mitigate disasters or rebuild their communities after they occur, the federal government, with its access to significantly greater resources, will be working in lock-step with them throughout the process.

Mayors are on the front lines of efforts to mitigate, respond to and recover from disasters. Our residents look to us for speedy action and for reassurance that their lives and communities will quickly return to normal. Yet, current law denies us the ability to access federal resources directly, requiring instead that we work through state governments, which are often grappling with their own disaster response efforts. We are left in the impossible position of being responsible to our constituents without having the authority or resources to adequately respond to their needs.

The 2005 hurricanes also clearly pointed to the need to distinguish between a disaster that may have a serious effect on a community but is limited in scope and a catastrophe such as Hurricane Katrina, which led to the complete evacuation of New Orleans and left 80 percent of the city underwater. Federal law must provide different mechanisms to govern the response to these very different situations so that the needs of our residents are met quickly and recovery can proceed as rapidly as possible.

One of my goals throughout our recovery from Hurricane Katrina has been to share what we have learned to help ensure that no other city will experience what we did in New Orleans. Because disaster response and recovery is important to every city, the U.S. Conference of Mayors asked that I lead a working group to formulate comprehensive recommendations for improving the Stafford Act. Working with my co-chair, Sacramento Mayor Kevin Johnson, and with the participation of mayors, emergency managers and other staff from cities throughout the country, we have outlined a comprehensive set of reforms. Without their time and effort this report would not have been possible. I am most grateful to all who participated in its development.

1300 PERDIDO STREET | SUITE 2E04 | NEW ORLEANS, LOUISIANA | 70112
PHONE 504.658.4900 | FAX 504.658.4939

Our recommendations cover catastrophic disasters, hazard mitigation, individual and household assistance; insurance, other disaster grants, emergency preparedness and response, and FEMA administration.

We also must thank President Obama's Administration and key committee leaders in Congress who have worked to improve disaster response and recovery since the catastrophic events of 2005 demonstrated the need so clearly. Congress has provided special legislative relief to the Gulf Coast, and begun to direct change for the future. The Obama Administration has brought fresh perspective to Gulf Coast recovery on a day to day basis, and is working to strengthen disaster recovery for the nation through the efforts of a recently established Long Term Recovery Working Group of key administrators.

We look forward to continuing to work with you to further develop and implement these recommendations.

Sincerely,

C. Ray Nagin
Mayor of New Orleans
Chair, Stafford Act Reform Task Force
The United States Conference of Mayors

FOREWORD

Over the past eight decades, The United States Conference of Mayors has worked to ensure that the federal government is aware of and understands the problems confronting the nation's cities, and has helped the federal government shape the most appropriate responses to those problems. This is the role we play when disasters – natural or manmade – strike our cities. But we have another, equally important role to play when disasters occur: At those times we serve as a clearinghouse – identifying the stricken city's specific needs and communicating those needs to cities across the country so that they are able to share their personnel, equipment, or other needed resources.

When Hurricane Katrina hit, like all other Americans, we were glued to our TVs, watching in horror the devastation in New Orleans and elsewhere along the Gulf Coast. But we also took immediate action. In the first hours of the Katrina disaster, then Conference President and Long Beach Mayor Beverly O'Neill told mayors that "as we have seen in recent disasters both in the United States and around the world, there are no more charitable and caring people than those in our cities and in our nation. It is our job to help lead in this effort by doing all we can to direct their energy to what is needed most."

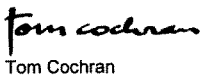
Mayors immediately began working to address the needs of the cities hard hit by the hurricane, and to help take care of the hundreds of thousands of displaced persons and families. A few days later Mayor O'Neill told her colleagues, "Your work is making a major difference, and we will not rest until our cities are rebuilt and our fellow citizens are able to return to the communities they so love."

At the Conference of Mayors we worked closely with the business sector – Walmart, Home Depot, and others – which donated needed goods and services and assisted with their transport. We also worked closely with the federal government. Then Housing and Urban Development Secretary Alphonso Jackson called me to request help in identifying housing for displaced persons. We immediately surveyed cities and quickly received responses from over 100 that identified thousands of possible housing units. And we worked with the Department of Homeland Security, asking mayors to encourage their governors to seek Presidential emergency declarations so that relief assistance would be eligible for 100 percent reimbursement.

When disasters occur we are always overwhelmed by the outpouring of help from cities. We can count on our cities to always do their part, but we must be able to count on the federal government to do its part as well. Unfortunately, we have seen with Katrina and Rita and too many other recent disasters that this is not happening.

New Orleans Mayor C. Ray Nagin has experienced something that I hope no other mayor will ever have to experience. We appreciate his willingness to chair our Stafford Act Reform Task Force and to lead our efforts to identify needed reforms in federal disaster assistance. In the difficult period since Katrina, he has amassed a wealth of knowledge about what needs to be done to improve this nation's responses to disasters. Through the Task Force he has passed along that knowledge to all of us, and for that we are most grateful.

Thanks go to Mayor Nagin and his staff; to Sacramento Mayor Kevin Johnson, who served as Vice Chair of our Task Force; and to the mayors, emergency managers, and other city staff who devoted significant time and effort to the development of the recommendations contained in this report.



Tom Cochran
CEO and Executive Director
The United States Conference of Mayors
January 2010

REPORT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the federal law that supports preparation for and response to disasters. It gives the President power to issue disaster declarations that authorize help for states and local communities overwhelmed by events that have disrupted their normal functioning. In the aftermath of Hurricanes Katrina and Rita and after other natural and man-made disasters since 2005, it has become increasingly clear that the Act is inadequate to address many of the most pressing needs of governments and communities affected by such events. Though it was written to give much discretion to federal administrations for tailoring the response to the need, the flexibility in the Stafford Act is not adequate to handle the widespread destruction caused by a catastrophic disaster, and it is not always used to make the most effective decisions after emergency events in general. Response is frequently stymied by a limiting law, bureaucratic inefficiencies and conflicting or unclear policies and regulations.

To bring about critically needed comprehensive reform, this paper identifies specific problems with current Stafford Act law, regulation, and policy which impede effective preparedness, response, mitigation and recovery efforts. It proposes changes which will enhance local emergency management and recovery capability. It was developed by the U.S. Conference of Mayors Stafford Act Reform Task Force through a series of meetings, primarily held via conference call. This effort was made possible through the collective experience of mayors and local emergency management directors and staff who have been at the forefront of responding to disasters that have affected their communities.

Note that the Stafford Act section number is included for recommendations which require legislation. Those which can be implemented through policy or regulatory changes are identified with an asterisk.

CATASTROPHIC DISASTERS

Provide for catastrophic disaster designation to speed up funding availability and recovery – Some disasters are so great in scope and effect that they require special consideration for the response and recovery efforts. The Stafford Act should be amended to differentiate "catastrophic disaster" as one which has a more devastating impact than a "major disaster." Catastrophic events are currently defined in the National Response Framework as "any natural or manmade incident, including terrorism that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions." (Sec 102) A formula should be developed to determine if a disaster meets the criteria for catastrophic designation. Such a designation would then trigger the following actions:*

- Give the President the authority to waive Stafford Act provisions and regulatory compliance following a catastrophe (Sec 301);
- Provide automatic 100 percent federal funding for all categories of eligible work for the duration of a disaster (Sec 403);
- Mandate the immediate release of federal funding for 50 percent of the Preliminary Damage Assessment (PDA) estimate for all grant programs. Currently "Immediate Needs Funding" can take 60 – 90 days or longer and is not available for initial recovery work on critical infrastructure, including public safety facilities and equipment (Sec 403);
- Establish a 90-day "hold harmless" period for the procurement of goods and services at the beginning of a disaster so that local and state governments can respond quickly to meet urgent needs; *

- Lengthen and align deadlines for all grant categories for a minimum of one to five years based on the requirements of the grant program. For example, Emergency Work should be extended to one year and Hazard Mitigation should be extended to a minimum of five years to allow the affected communities time to plan, recover and rebuild ;*

- Provide 100 percent federal cost share for hazard mitigation (Sec 404);

- Provide immediate administrative funding for affected jurisdictions to quickly implement an effective hazard mitigation program (Sec 404);

- Assure that all modalities of mental health treatment (in addition to Crisis Counseling Assistance and Training) are available and funded to provide psychiatric services and medications to the affected population. In catastrophic events, the personal lives of huge segments of the population are in crisis; damage to basic health and mental health infrastructure will prevent adequate help for the severe and prolonged mental health needs in the affected communities. Mental health services also need to be provided to long-term evacuees in their host communities (Sec 416);

- Cover the rapid restoration of private and for-profit utilities, including electrical, water, sewer and telecommunications, after a catastrophic disaster to allow them to provide critically needed services as quickly as possible (Sec 427);

- Expand regulatory provisions to allow reimbursement for the cost of mass shelter and care, including coverage of multiple moves evacuees may make before returning home to catastrophically damaged communities.*

Require Catastrophic Disaster Housing Plans to meet community needs – Because of the magnitude of damage done to housing in a catastrophic disaster, the final National Disaster Housing Plan must ensure that the extraordinary needs of communities which have experienced catastrophes, as well as those of host communities that receive long-term evacuees, are met. This includes providing adequate shelter, temporary and transitional housing, and authorizing repair of permanent structures (rental rehabilitation).

HAZARD MITIGATION

Adequately fund and streamline the Hazard Mitigation Grant Program – Hazard mitigation measures have proven to be effective in reducing property damage, costs of repair and replacement, and loss of life. The Federal Emergency Management Administration's (FEMA) Hazard Mitigation Grant Program (HMGP) provides funding to assist communities to implement long-term hazard mitigation measures as they repair or rebuild following a disaster. Public facilities, critical infrastructure, and private homes and businesses can be retrofitted and hardened. New construction and development patterns can follow best practices to prevent the waste of future resources for repairing what could have been mitigated. A Congressionally mandated study for FEMA estimated that $4 can be saved for every dollar spent to mitigate. More funding should be made available for hazard mitigation after a disaster and there should be more funding and financial incentives for hazard mitigation programs in communities that are at high risk. Additionally, the entire hazard mitigation grant process should be streamlined so less funding is spent on complex and bureaucratic administration and more on the actual construction of safer structures. The HMGP should be changed to:

- Provide the President discretion to increase the federal cost share to 100 percent for hazard mitigation, as in other disaster programs (Sec 404);

- Direct hazard mitigation funding to the impacted community in proportion to the damage done by the event (Sec 404);

- Make initial hazard mitigation funding available immediately, based on the Preliminary Damage Assessment (PDA) estimates (Sec 404);

- Under the Stafford Act's mitigation planning provisions, allow at-risk communities to be "pre-certified" to take initiatives that follow hazard mitigation guidelines, and to be reimbursed once post-disaster mitigation funding is available (Sec 322);

- Require 75 percent of the allowable administrative costs to be provided by the grantee to the subgrantees as funding for their implementation costs or as services performed by the grantee for jurisdictions without administrative capacity (Sec 404);

- Increase the amount of Hazard Mitigation Grant Program funding by 4 percent of the estimated aggregate amount of the grant for both state and local jurisdictions that have building codes consistent with or more stringent than the most recent nationally recognized model building codes if adopted within six years of the most recent version of that code (Sec 404);

- Allow for approval of an initial conceptual HMGP application that conforms to an approved Hazard Mitigation plan but does not require significant expense on a project that may ultimately not be approved;*

- Allow the development costs of detailed design, engineering, environmental work and cost-benefit analysis components of an HMGP application to be eligible for program funding;*

- Allow all jurisdictions, regardless of size, to apply for HMGP funding if they have an approved hazard mitigation plan and the county in which they are located does not. Currently the jurisdiction would not be eligible if it were a part of a county that did not have an approved plan;*

- Permanently adopt the Demolish-Rebuild (Pilot) Program developed after Hurricanes Katrina and Rita and make it an eligible activity under HMGP (Sec 404);

- Institute use of cost-effective considerations based on geographic and historical data as a substitute for cost-benefit analysis formulas to streamline the application process and speed up mitigation project completion;*

- Streamline criteria for environmental review for hazard mitigation to simplify the application process and speed up mitigation project completion;*

- Institute a uniform state and federal application methodology for hazard mitigation to prevent inconsistencies and delays in the approval process;*

- Allow for complete hardening of a facility impacted by the event, not just the broken element;*

- Allow for consideration of local fire, building, and electrical codes in reimbursement of costs for replacement or repair of a structure or its mechanicals.*

INDIVIDUAL AND HOUSEHOLD ASSISTANCE

Increase funding for and improve administration of programs to meet needs of individuals and communities experiencing disasters and host communities providing assistance – Stafford law and regulation have authorized many programs to assist people affected by emergencies and disasters. Currently, funding for the programs is insufficient to meet the need, and the implementation of the programs themselves requires improvement. These deficiencies hurt not only disaster victims but also the communities that host residents when they are evacuated. This is a particularly acute problem in

catastrophic disasters in which it will take more time before people can move back to their communities. For all disasters, thorough case management handled by qualified professionals – as opposed to inadequately trained temporary workers – is essential to the success of Individual Assistance and other programs that offer help to victims. It is needed to conduct outreach, expedite claims, and maximize access to assistance in the many categories that are available, including financial, housing, employment, health and mental health. It is needed to ensure that all eligible applicants, particularly those with special needs such as the elderly, people with disabilities, victims of domestic violence and families with children, receive appropriate assistance. Further, changes in law and regulation are needed to ensure that host communities are made whole after providing shelter and resources for victims. The Stafford Act should be changed to:

- Create a national disaster Case Management Program which provides a comprehensive approach to disaster recovery that will ensure interagency cooperation (Sec 426);

- Provide qualified case management personnel trained in Individual Assistance, Other Needs Assistance, and all potential grant programs for disaster victims. It is important to educate local jurisdiction staff as well as federally funded case management workers to better advise citizens on their options to receive federal assistance and responsibilities for documenting its use. This will avoid misunderstandings and better serve the affected communities (Sec 426);

- Ensure that assistance for individuals and households adequately covers meals, transportation which could include multiple moves, and hotels so that evacuees will not be compelled to stay in shelters, further burdening host communities;*

- Provide temporary mortgage or rental payments for individuals or families who face financial hardship caused by a disaster (Sec 408);

- Allow all evacuees regardless of citizenship status to be eligible for Individual Assistance so that they do not become a burden on local host communities (Sec 408);

- Do not penalize households that need to separate temporarily so that one member can return to work in the affected community (Sec 408);

- Provide safe and secure living accommodations for victims of domestic violence so they are not penalized for requiring separate accommodations (Sec 408);

- Allow for 100 percent reimbursement for affected communities and host communities for personnel costs and lost revenue incurred to manage and implement assistance for evacuees (Sec 408);

- Ensure that affected and host communities are stakeholders in the coordination of all Individual Assistance and other financial assistance programs. Due to privacy laws prohibiting the sharing of personal data, this would facilitate maximum outreach to eligible applicants and help to verify that benefits are not duplicated (Sec 408).

Finalize the National Disaster Housing Plan and Improve Disaster Housing – FEMA should expedite finalization of a disaster housing plan that does not rely predominantly on travel trailers and vouchers, both of which have proven problematic. To support better ways of providing disaster housing, the Stafford Act should be changed to:

- Authorize the President to use emergency funding for repair of permanent structures (including rental units) needed for temporary or transitional housing within the affected communities. Strategic investment in permanent repair can provide housing faster where it is most needed and prove more cost-effective in the long-term recovery of the affected community (Sec 408);

- Make disaster housing available not only for displaced residents but also for workers who are critical to response and recovery operations (Sec 408);

- Ensure that the National Disaster Housing Plan takes into account the needs of both communities which have experienced disasters and host communities which receive evacuees. The plan should include provisions for adequate shelter, temporary housing, and transitional housing;*

- Fully engage the Department of Housing and Urban Development (HUD) as a partner with FEMA in coordinating the provision of disaster housing by using funding from the Disaster Relief Fund (DRF) – the source of funding for disaster assistance programs (Sec 408)

INSURANCE

Reform insurance regulations to facilitate disaster recovery – Individuals and jurisdictions need quick access to funding to repair or replace damaged homes, businesses, facilities and infrastructure to facilitate disaster recovery. This can be accomplished in part by reforming insurance regulations. Stafford Act regulations should be changed to:

- Allow grantees and subgrantees to be reimbursed for insurance deductibles as an eligible cost, thus rescinding a policy change that limited deductible recovery to a one-time event;*

- Allow jurisdictions to reimburse the federal government for insurance claims payments received during the close out phase of the grant rather than deducting the anticipated amount from a Public Assistance grant up front. The anticipated amount is often inaccurate and the amount obtained may take many years to collect. Current practices delay the rebuilding or repairs of the damaged public asset;*

- Increase the insurance requirement threshold of $5,000 to $100,000 to be consistent with the proposed small projects threshold;*

- Waive proof of insurance requirements for Individual Assistance recipients initially so that immediate assistance can be provided to those in need. Require recipients to reimburse the program when and if insurance claims payments are made; *

- Establish criteria whereby local government entities other than just states may be authorized to self insure (Sec 311).

OTHER DISASTER GRANTS

Reform disaster assistance programs to facilitate recovery – Many programs created by the Stafford Act have limitations set by law, regulation, or policy that have caused problems and delays in the recovery of impacted communities. The requirement for grant programs to be run through the states instead of directly with cities adds an additional layer of bureaucracy and delay. The Community Disaster Loan (CDL) Program, whose purpose is to provide operating funds for local governments that have suffered substantial loss of revenue, has dollar limits that present a serious impediment to recovery. The grant has an arbitrary cap of $5 million and 50 percent of revenue loss, regardless of the amount of the actual loss which, in larger cities, could be hundreds of millions of dollars. To get beyond that limit requires Congressional action and time that communities struggling to rebuild cannot afford. Another serious impediment is the limitation on the use of grant funds to pay regular as well as overtime for work performed by the staff of affected jurisdictions after an event. These and other assistance programs should be changed to:

- Give grant standing to local jurisdictions that are CDBG Entitlement Communities -- Local governments that are Community Development Block Grant entitlement communities should have standing as grantees for all disaster grant programs including Hazard Mitigation so that they may deal directly with the federal government; *

- Remove the $5 million cap on the Community Disaster Loan (CDL) program – The amount available for loan funds should match the amount of revenue lost. Decisions on loan repayment or cancellation can be made after clear analysis of a jurisdiction's ability to pay back the loan in part or in full without undue hardship (Sec 417);

- Cover both regular and overtime pay for state and local public employees such as first responders, building inspectors, healthcare professionals and sanitation workers following a disaster – The scope and scale of emergency work performed in response to a disaster is often well outside any emergency personnel's regular call of duty and should be reimbursed in the same manner as permanent work. To provide fiscal relief and reduce administrative costs, any work performed that qualifies as eligible under emergency protective measures or debris removal should be fully reimbursed, regardless of the labor category or pay rate of the employee; *

- Eliminate Alternate Projects Federal Share Reduction to allow for 100 percent federal funding – Because alternate projects often represent a more effective and efficient use of public funds and discourage the rebuilding of facilities no longer needed, providing 100 percent federal share for all alternate projects would allow the applicant to make rebuilding decisions based on what is best for the community rather than funding reimbursement levels; *

- Permit removal of slabs and foundations on grade as an eligible demolition expense – While FEMA currently has the authority to consider slab and foundation removal as an eligible cost under "very unusual circumstances," this authority should be clarified to permit reimbursement for slab and foundation removal, which can be critical to public safety, redevelopment, and economic recovery;*

- Cover increased operating costs associated with the disaster – Operating costs of the affected community increase as the result of a disaster. All costs beyond normal day to day operations should be eligible for reimbursement under the Public Assistance Program for not less than six months; *

- Cover the replacement of vehicles and equipment in the same way that facilities are covered – Recent FEMA policy has required that vehicles or equipment must be repaired or replaced with those of the same age, capacity and vintage, unless this cannot be done within reasonable time and cost. Vehicles and equipment (particularly those used for public safety, transportation and service) should be treated in the Stafford Act like facilities and replaced if they are over 50 percent damaged of their actual cash value or not reparable (Sec 406);

- Elevate the threshold for small projects – The threshold for small projects for which funding is immediately released when obligated under Simplified Procedures should be elevated to $100,000. This would reduce administrative costs for FEMA, states, and other applicants and speed up recovery (Sec 422);

- Develop a timely, neutral, separate third-party appeals process – The appeals process should be changed to resolve Project Worksheet (PW) disagreements over damage assessments, cost estimates, project scope, and other issues with FEMA. Applicants should be able to request the use of a neutral, separate third party process and receive timely answers in cases involving a smaller dollar value than is allowed for arbitration. Arbitration would then only be invoked as a final step for larger projects. The appeals should be acted on by an independent panel composed of individuals knowledgeable about Stafford Act law and regulations (Sec 423);

- Provide funds to reimburse costs associated with preventive measures – Stafford Act pre-event funds are provided through annual grants to assist with preparations such as hardening of structures. Reimbursement should also be provided to jurisdictions that use resources to take urgent preventive measures to mitigate the effects of potential disasters which appear to be imminent threats. These measures, which could include precautionary evacuations and target-hardening of facilities or levees, should be covered even if the path of the threatening event changes or the preventive measures successfully mitigate the effects of the disaster (Sec 403);

- Expand small business disaster relief – Various loans and grants, including micro grants, should be available to small businesses to help them meet immediate costs. The current per business cap of $1.5 million on loans offered by the Small Business Administration's Economic Injury Disaster Loan should be raised or eliminated.*

EMERGENCY PREPAREDNESS AND RESPONSE

Adequately fund and support preparedness and response activities – The Stafford Act has many provisions that govern preparedness and the initial steps leading toward the declaration of a disaster. Funding for preparedness, like funding for mitigation, can pay off by saving lives and property. It is particularly important that the federal government provide adequate resources for preparedness mandates – from evacuation plans to communications equipment – so communities can attain the higher standards and meet the deadlines. Reimbursement for eligible costs incurred for preparedness or for providing mutual aid must be quicker and less bureaucratic in order to encourage more critically needed cooperation without penalizing those who want to help. Federal assistance with coordination across state lines and regions, combined with the use of federal authorities and assets, will improve the quality and reach of the planning. Changes should be made to:

- Facilitate expeditious direct reimbursement to cities that provide mutual aid by:
    - Authorizing city-to-city and/or state-to-state mutual aid agreements to immediately trigger funding and liability protection during major or catastrophic emergencies without having to wait until a formal disaster is declared and assistance is granted through the Emergency Management Assistance Compact (EMAC) system (Sec 612);
    - In the event of a federal declaration of emergency, reimbursing costs associated with emergency protective services through mutual aid assistance from the time at which the state declared the emergency (Sec 613);

- Honor certifications and licenses across state lines – Since the provision of regional mutual aid will frequently require emergency service professionals to perform duties outside the boundaries of their home states, state-based professional licenses or certifications should be honored across state lines in the event of a disaster or emergency event (Sec 612);

- Coordinate various funding sources – Cities rely on funding from different federal sources to prepare for disaster and develop response and recovery capacity. While these funding sources are not necessarily part of the Stafford Act, they affect local governments' ability to become resilient and maximize the benefits that Stafford is supposed to provide for disaster preparation and management. These funding sources include Emergency Management Performance Grants, State Homeland Security Grants, and Public Safety Interoperable Communications Grants. All of these programs should be adequately funded and have sufficient flexibility to allow them to meet the needs of more local governments;

- Provide adequate funding for all municipalities -- Provide adequate funding to jurisdictions below the county level for preparedness activities including staffing, disaster management, and plan development. Under current policy, funding for these activities is usually limited to the county level;*

- Establish a National Sheltering Plan – FEMA should be directed to establish a National Sheltering Plan that identifies regional shelters capable of housing thousands of evacuees and/or victims from a natural or man-made disaster or terrorist attack. This plan should consider the use of federal locations for the development of pre-established, coordinated, and secure facilities to provide reassurance and prevent panic in large scale, regional, or multi-state disasters. Shelters should include provisions for special needs populations, including persons with disabilities, the elderly, families with children, and persons with limited English proficiency. They should also provide for sheltering pets;*

- Develop a National Emergency Transportation Evacuation Plan – FEMA should work in coordination with the U.S. Department of Transportation and its agencies to develop a plan which incorporates all modes of transportation, makes cost-effective use of federal assets, clearly defines roles and responsibilities for preparing for major regional evacuations, increases federal involvement, and consolidates state and regional plans already in existence. It should incorporate planning for special needs populations who lack transportation resources, including persons with disabilities, the elderly, families with children, and persons with limited English proficiency, and should also provide for pets;*

- Recognize utility workers as first responders – Utility workers need to be credentialed and given shelter and supplies in the same manner as public safety first responders so that they can quickly enter the affected area after a disaster to begin repairs on critically needed utility services;

- Expand the definition of disaster events covered under the Stafford Act – The definition of types of events covered under the Stafford Act should include chemical, biological, radiological, and nuclear attacks or accidents (Sec 102).*

- Reform the disaster declaration process (Sec 501) – FEMA should:
    - Accept a governor's request, including the Preliminary Damage Assessment report (PDA) numbers provided, for the determination of a disaster declaration. This will expedite the declaration process to provide needed federal assistance more quickly.*
    - Base the declaration of a disaster on the population of the specific local geographic area (city, borough, township, etc.) affected, not necessarily the entire county. Otherwise, individual communities which experience disasters that do not affect the whole county may not be included in a declaration and will not receive assistance.

FEMA ADMINISTRATION

Increase FEMA's administrative and response capabilities – FEMA has historically recognized the ongoing need for permanent staff for planning and monitoring its regular programs. Events and disasters happen randomly, however, and create erratic demands which also require fully trained, full-time professionals to provide an effective, appropriate, expeditious response. To respond quickly to emergency situations, FEMA must have a greater permanent professional capacity and the power to coordinate resources from other departments and agencies to help meet needs that cannot be met with agency personnel alone. It also must work to ingrain a "mission-- driven" rather than "compliance-- driven" philosophy into its operations, to speed up bureaucratic processes and meet urgent needs. To improve FEMA program administration, Stafford Act law and policy should be changed to:

- Empower FEMA as the lead agency in a disaster event to coordinate all federal departments that have disaster funding responsibilities and to assure that all funding for the communities affected by the event is put in place. This will include coordination between departments and agencies that have overlapping jurisdictions, such as FEMA, the Corps of Engineers, the Department of Transportation, HUD, and the U.S. Department of Agriculture's Natural Resources Conservation Service (Sec 402);

- Increase FEMA's staff capabilities by assuring that it has experienced, stable, and adequate permanent staffing. Immediately following a disaster, management-credentialed Tiger Teams that have direct communication with the Administration and FEMA headquarters and a complete understanding of both response and recovery operations should be deployed. When personnel are transferred they should be required to leave clear transition notes, agreed upon with the applicant, which contain the facts and status of all decisions, eligibility determinations, and projects they are supervising;*

- To expedite project and program implementation, require FEMA to accept all plans, designs and engineering done by certified local professional staff as a basis for grant and funding approval.*

Consolidate all Stafford Act statutory and regulatory provisions – The Stafford Act and related laws and amendments should be consolidated into one code to reduce variable and conflicting interpretations and to provide clearer guidance for FEMA and communities working to apply disaster policy, regulation, and law in preparedness, response, mitigation, and recovery.

Task Force Cities

Little Rock	AR
Sacramento	CA
Hallandale Beach	FL
Pembroke Pines	FL
Valdosta	GA
Maui	HI
Hoffman Estates	IL
Des Moines	IA
Kansas City	KS
Lexington	KY
Louisville	KY
Baton Rouge	LA
New Orleans	LA
St. Louis	MO
Elizabeth	NJ
Perth Amboy	NJ
Rochester	NY
Cleveland	OH
Reading	PA
Providence	RI
Charleston	SC
Dallas	TX
Fort Worth	TX
Galveston	TX

THE UNITED STATES CONFERENCE OF MAYORS

Tom Cochran, CEO and Executive Director

1620 Eye Street, N.W.
Washington, DC 20006
Tel: 202.293.7330
Fax: 202.293.2352
www. usmayors.org

Committee on Transportation & Infrastructure
Subcommittee on Economic Development, Public Buildings and Emergency Management
Hearing March 4, 2010
"U.S. Mayors Speak Out: Addressing Disasters in Cities"
Questions for the Record

RESPONSE FROM MAYOR C. RAY NAGIN:

Question:
The Mayor's testimony discussed Community Disaster Loans. Please explain how your city used Community Disaster Loans. Why they are so important to cities? How the $5 million cap currently in statute would impact cities?

Answer:
The Community Disaster Loan (CDL) program was critical to the ability of the City of New Orleans to remain fiscally viable following Hurricane Katrina. After the storm and the failure of the levees, 80 percent of the City was flooded and the entire population was forced to evacuate. This forced a complete shut-down of the New Orleans economy.

As a historically poor city, New Orleans did not have major financial reserves from which it could draw to continue basic operations. In addition, City leaders were not sure how they would make payroll and maintain the employment of first responders and those working on clean-up and recovery. The City also was concerned about defaulting on public bonds and thereby negatively impacting the bond rating.
In early September of 2005, with the flood waters still covering most of the city, Mayor Nagin began to request immediate funding for these and other costs. With no immediate resources available, the City was forced on October 4, 2005, to lay off 3,000 employees, approximately half of our workforce. Not only were these employees needed to perform roles in the recovery process, but many also were dealt the double blow of losing their homes and their jobs. The dramatic staff reduction also meant that the City's remaining employees were asked to perform the work of two to three people, a reality that continues today in much of New Orleans City government.

The main operational relief offered by the Stafford Act is the Community Disaster Loan program. The implementation of this program is slow, and the program limitations make the program an inadequate solution for major cities. Its $5 million cap and limit of up to 50 percent of revenue loss means that a community in the throes of an emergency must wait for the slower processes of legislative relief to have a reasonable amount of funding made available. In New Orleans, for example, $5 million would have provided very little relief given the City's annual budget and the magnitude of the disaster. In 2004, the City had a budget of $479.2 million, or more than $1.3 million per day. Limiting CDL assistance to what is equivalent to couple of days' expenditures would have further imperiled City government and probably led to bankruptcy.

Through Congressional legislation in October of 2005, the $5 million cap on the Community Disaster Loans was lifted for Katrina and Rita to 25 percent of revenue loss. At the same time, Presidential discretion for forgiveness of these special loans also was taken away. In October of 2006 – over a full year after the event -- Congress provided the City and other affected entities the authority to borrow up to 50 percent of annual revenue loss for operating. As a result, the City of New Orleans was able to borrow a total of $240 million. Then, in May 2007, Congress reinstated the President's discretion to forgive the loans.

The CDL was enormously important to the city. New Orleans used $61.4 million for operational expenses in the four months immediately after the storm. With the economy completely shut down, the normal flow of revenues was halted for various reasons, all of which were out of the control of city government officials. The CDL provided an immediate source of operating funds for essential public safety-related services and relieved the burden of making more substantial cuts in administrative staffing.

The City of New Orleans used the remainder of the CDL proceeds over a five-year period to support the funding of critical services. This was essential because the City's tax revenues and other income have not yet returned to pre-Katrina levels. This also allowed the City to make incremental staffing adjustments as the new unpredictable economic and fiscal environment unfolded.

The need for Congressional intervention also has impacted our ability to have these loans forgiven. Under normal CDL processes, the City of New Orleans would have been able to apply for forgiveness three full years after the disaster, in January 2009. However, because the loans received by the City of New Orleans were considered "special" and outside the regular provisions of the Stafford Act, there were no rules in existence for this forgiveness. Rules were written and promulgated a few weeks ago and the City of New Orleans is now in the process of applying for forgiveness. The City hopes that this forgiveness will be granted because the needs are so great in comparison to the need stemming from other disasters that have been forgiven.

In the future, no communities should have to walk the financial tight rope mandated by these limitations on funding. This leads to the loss of valuable time and energy that should be used in stabilizing and rebuilding a devastated city.

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