

**Washington State Comments on Proposed Rules
44 CFR Part 206**

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Provided by John Vollmer, Individual Assistance Program Administrator
Phone: 253.512.7076.
E-Mail: j.vollmer@emd.wa.gov

NOTE: All comments have been coordinated with the Recovery Unit Manager (Diane Offord) and the Director of Emergency Management (Glen Woodbury).

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1. **Federal Register, page 3412 – Request for comment “on the tension between the need to consolidate and streamline ... and the need to ensure the availability of an active State role in the process, on the other hand.”** We believe it is important that the States maintain an active role in assisting disaster victims. While streamlining the administration of disaster assistance is a commendable goal, recent experience has shown that FEMA does not have a comprehensive quality control program in place to ensure all disaster applicants are treated equitably. Extensive errors in processing DR-1361 cases clearly demonstrated that FEMA is not ready to assume the role of sole source provider. Had it not been for the aggressive participation of the State, hundreds of applicants might have been denied hundreds of thousands of dollars in assistance they were otherwise entitled.

On the surface having only one agency manage and administer disaster assistance programs has appeal. Because the public has little knowledge of the intricacies of disaster assistance programs and the inherent problems in program management, they are not well equipped to make intelligent comment on this issue. They have no concept of the advocacy role the state plays on the behalf of applicants. We maintain the public will support the streamlining of disaster assistance, but due to an existing void in comprehensive quality control at the federal level, it would be a mistake and a disservice to the public to exclude the states from managing “Assistance to Address Other Needs” until such time as FEMA develops and implements a comprehensive quality control program.

2. **Federal Register, page 3413 – Reference to Section 408(a) (3) limiting temporary housing assistance to 18 months.** Instead of limiting temporary housing (rental) assistance to 18 months, consider tying the limit to the maximum amount of the grant (\$25,000) instead of time (18 months) while requiring the applicant to provide a housing plan as a condition of housing assistance beyond 18 months. This logic should apply to all types of housing assistance.

Occasionally, there is a need for rental assistance beyond 18 months. The Aldercrest landslide (DR-1255) is one example that comes to mind. Most of the families affected by this landslide lost their homes and the property it was on. The financial challenges associated

with this recovery effort caused several families to seek rental assistance well beyond 18 months. With rent less than one thousand dollars a month, these folks could have received federal assistance for several more months if they were allowed to extend their assistance until \$25,000 had been used.

3. **Federal Register, page 3413 – Request for public comment on the “housing repair authority generally, and on the \$5,000 cap in particular.** The rising cost of homes and building materials negatively affects one’s ability to make a home “functional” following a disaster when limited to \$5,000. This change represents a net loss of \$5,000 from the current administrative limit of \$10,000. Since hazard mitigation measures also have to come out of the \$5,000, the actual amount available for repairs is further reduced. This is not better service. Limiting repairs to \$5,000 will result in significantly more people being given rental assistance, and/or being put in a position requiring more recovery time resulting in:
 - a. More people being forced out of their homes into rental property or hotels.
 - b. Less people qualifying for SBA loans because their total cost to recover will increase.
 - c. As the SBA decline rate increases, more people will end up getting some assistance through Assistance to Address Other Needs increasing the cost to states that offer the program.
 - d. Many low-income applicants may never be able to recover because they had too much damage to get repair assistance, and were too poor to qualify for a loan. And, Assistance to Address Other Needs does not cover structural repairs.
 - e. An increase demand on voluntary agencies, already poorly positioned to help disaster victims, to meet the additional unmet needs.
 - f. An increase in unindemnified loss as insurance companies either delete catastrophic coverage or continue to increase deductibles for natural disasters.

Contrary to the statement on page 3418, Assessment of Regulation on Families, we feel capping repairs at \$5,000 will have a negative impact on a family’s well being in the aftermath of emergencies of disasters.

1. **Federal Register, page 3413 – Request for public comment on the “housing repair authority generally, and on the \$5,000 cap in particular (Financial Assistance for replacement).** It is difficult to visualize how the \$10,000 rule for the replacement of a home will ever be used because it is totally inadequate. A replacement home cannot be purchased for \$10,000 or less. The only example we can envision is if a person was to purchase a travel trailer or very old manufactured home. The \$10,000 replacement value would be better applied to home repairs. We suggest combining the moneys of repair and replacement so that a total of \$15,000 is available for repairs or replacement.
2. **Federal Register, page 3414 – “Transient Assistance.” FEMA has chosen not to delineate “Transient Assistance” in the new rules.** We believe “Transient Assistance” should be spelled out in the rules so it is clear to the public what they are entitled to receive. Otherwise, “Transient Assistance” is little more than FEMA policy subject to indiscriminate application.

3. **Federal Register, page 3414 – Flood Insurance.** We agree and support FEMA’s proposed rule on the flood insurance requirements: “Therefore we interpret the various flood insurance purchase mandates of 42 U.S.C. 5174 to apply only when a housing unit is to be placed in a designated special flood hazard area.”
4. **Federal Register, page 3415 – Elimination of the GFIP.** While we agree with the elimination of the purchase of the GFIP as a part of the disaster assistance program, we support the idea that a “modified version of the GFIP process, pursuant to which disaster victims would be provided flood insurance for three years at subsidized rates that they would have to pay for using their own resources.”
5. **Federal Register, page 3416 – Collection of Information, reference Development of a State Management Plans for Financial Assistance to Address Other Needs.** The requirement to have both a Management Plan and MOU is inconsistent with the Paperwork Reduction Act. Prior to the rule change, the states were required to have an administrative plan that met the requirements of both the MOU and the management plan. The Administrative Plan was reviewed by FEMA prior to the disaster and constituted an agreement between FEMA and the State on how the program would be delivered (Management Plan). Requiring both an MOU and an Administrative plan places an extra and unnecessary burden on the states. This new and additional requirement does nothing to improve the process used in the past and can also be viewed as an attempt by FEMA to discourage the states from administering Financial Assistance to Address Other Needs. We encourage FEMA to continue the use of the State Administrative Plan in lieu of an MOU and a Management Plan.
6. **Federal Register page 3419 – Federalism.** While the proposed rule does not “appear” to indicate a challenge to the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the states, it is our desire that the stipulations of the MOU and Management Plan (assuming you disregard items 8 above) appear in 44 CFR to ensure items are not added to policy and procedures that may later be considered federalism.
7. **Federal Register page 3419 – Executive Order 12898, Environmental Justice.** While the proposed rules do not discriminate against the disaster victims based on race, color, or national origin, we believe they do discriminate against those who are financially challenged. Washington State maintains that limiting housing repairs to \$5,000 will have a gross negative impact on low-income disaster victims. Limiting housing repairs to \$5,000 will result in more low-income disaster victims being denied disaster assistance causing them to return to unsafe, unsanitary, and/or unsecured homes. We realize that FEMA will provide rental assistance to families with more than \$5,000 in damage. However, low-income individuals are less likely to qualify for SBA loans and Financial Assistance to Address Other Needs cannot assist with structural repairs. Consequently, low-income individuals may have no choice but to move back into an unhealthy environment.

Restoring the amount of repair assistance to \$10,000 or even \$15,000 would be a vast improvement and provide a greater level of Environmental Justice. Many recipients of Financial Assistance to Address Other Needs are economically disadvantaged – they wouldn't qualify if they weren't. Many are from minority populations.

8. **Federal Register, page 3420, Section 206.101 – Federal Assistance to Individuals and Households, paragraphs (f) and (g).** The issue here is the treatment of parents who are in arrears on child support payments (“deadbeat parents”). Under the current rules, these individuals can get housing assistance, but are denied SBA loans and subsequently denied access to Individual and Family Grants. However, if such a parent fails the SBA income test during registration, they can access housing assistance and are routed directly to IFG where additional assistance may be provided. Since disaster assistance is not counted as income and is exempt from garnishment, we recommend that “deadbeat parents” be given access to the full package of federal disaster assistance programs. As it now stands, there is double standard whereby low-income “deadbeat parents” have access to both grant elements and those reporting sufficient income at registration only have access to housing assistance. Denying “deadbeat parents” disaster assistance creates another set of financial challenges that may add to their inability to provide support, even if they wanted to.

We recommend that language be included in this section that addresses the issue of “deadbeat parents” allowing them access to all of the same programs that others disaster victims have access to.

9. **Federal Register, page 3420, Section 206.101 Federal Assistance to Individuals and Households, paragraph (h) (1) – Duplication of Benefits, “Significantly Delayed.** The term “significantly delayed” needs to be defined. Dealing with applicants who have insurance is always a challenge. To ensure “significantly delayed” is applied consistently and equitably, it must be defined.
10. **Federal Register, page 3420, Section 206.101 Federal Assistance to Individuals and Households, paragraph (h) – Duplication of Benefits.** The rule that reads, “In the instance of insured applicants, we will provide assistance under this subpart only when:” should be amended to add a paragraph (h) (5) that reads something like the following. “The applicant certifies that the estimated damage is below the maximum allowable repair assistance grant and provides a copy of the hazard insurance declaration page that clearly shows the damage is below the insurance deductible.”

Following DR-1361, a deep earthquake affecting 22 counties in Washington State, most of the homes had less than \$10,000 damage. Since most of the homes were valued in excess of \$100,000, the damage was below the earthquake insurance deductible of 10 percent. In FEMA's administration of the rule, the applicant had to send in an insurance denial before FEMA would process the application. This was later changed, asking the applicant to send in the declaration page of their earthquake policy if damage was below \$10,000. However, this only further confused the affected public.

If at the time of disaster the applicant estimates the damage to be below the insurance deductible, they should only be required to produce a copy of the insurance policy declaration page as a condition of acceptance for federal disaster assistance. This could be done at the time of inspection. Otherwise, disaster applicants are denied the immediate assistance they need to remain in their homes. Insurance companies are notoriously slow to provide damage reports and produce decisions on eligibility. Applicants are kept in suspense for long periods and receive no help. Additionally, applicants assume (falsely), that they would have been better off if they had not had the insurance, having the unintended consequence of people dropping their coverage.

11. **Federal Register, page 3422, Section 206.103(c) – Late Registrations.** In the past, the Regional Director had the authority to accept late registrations for processing during the 60-days following the regular registration period (re: 206.101(e)). We notice that the language in 206.103(c) no longer reads this way. Is it FEMA's intent to take this authority away from the Regional Directors? If so, we think this is a mistake. FEMA Regions work closely with the states and are the most knowledgeable of local conditions generating the late applications. The Region should be the one making the call on whether or not to accept late applications.

Additionally, we would like the Regional Director to have the authority to extend the 60-day grace period in extenuating circumstances. In disasters like earthquakes, damage is not always easily discovered because much of the damage is below ground or so subtle that it is unnoticeable until climatic changes take place. As an example, Washington State was in the middle of a drought on February 28, 2001 when DR-1361 was declared. Much of the earthquake damage went unnoticed until the draught dramatically ended with record setting rains nine months later. The heavy rains revealed septic and sewer system failures as well as water leaks in homes from cracks that could not be readily seen by inspection. While floods may fit well with the 60-day grace period rule, earthquakes do not. Regional Directors should have the authority to accept late registrations for longer than the 60-day grace period when circumstances warrant it.

12. **Federal Register, page 3422, Section 206.104 – Eligibility Factors.** Paragraph (a) (3) should be modified to reflect the change (if implemented) to item 13 above. If the damage is believed to be below the insurance deductible and the applicant produces the insurance declaration page as proof of the limits of the policy, assistance should be provided immediately.
13. **Federal Register, page 3423, Section 206.106 – Appeals.** Paragraph (b) should be changed to allow the state to appeal on behalf of an applicant without their permission. The State of Washington assumes the role of disaster advocate and seeks every opportunity to assist disaster victims to access the maximum assistance authorized. By virtue of the fact that Washington State will manage cases in the administration of the Financial Assistance to Address Other Needs, we will be able to detect processing errors or other mistakes the unknowing applicant might never know to appeal. In cases like this, the state should have the right to appeal (through the applicable FEMA Region) on the applicants' behalf. If this is not allowed, the state will be forced to contact the applicant, tell them that FEMA made a

mistake, and coach them on what to put in their appeal. This approach would have a negative impact on the public's perception of FEMA, whereas allowing the state to appeal directly results in a win-win situation.

14. **Federal Register, page 3423, Section 206.106 Appeals.** We recommend changing the appeal response time in paragraph (f) to 60 days or less.

Paragraph (f) of the proposed rule allows FEMA or the state 90 days to dispose of an appeal from the date received. We believe that a 90-day response time does little to meet the immediate and sometimes unmet immediate disaster needs of disaster victims. Even 60 days is too long, but is far more acceptable than 90 days. Washington State's Administrative plan calls for appeals to be answered as soon as possible, but no later than 60 days from the date of receipt. We strive for 30 days maximum.

Additionally, FEMA should publish an e-mail address for use in filing appeals. This is more in tune with 21st century communication, and would expedite the appeals process, and reduce the possibility lost regular mail.

15. **Federal Register, page 3424, Section 206.108 – Housing Assistance, Paragraph (b) (2) (iii).** Need to add language to describe how broad or narrow the mitigation demerit is, and to clarify who can apply for mitigation funds, e.g., does the home have to be damaged?
16. **Federal Register, page 3424, Section 206.108 – Housing Assistance, Paragraph (b) (2) (iv).** Once again, \$5,000 is inadequate. See our comments on this subject at item number 3.
17. **Federal Register, page 3424, Section 206.108 – Housing Assistance, Paragraph (b) (3).** See our comments on this subject at item number 4.