STATEMENT OF

W. CRAIG FUGATE
FORMER ADMINISTRATOR
FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: MITIGATING DAMAGE AND RECOVERING QUICKLY FROM DISASTERS

APRIL 27, 2017

Chairman Barletta, Ranking Member Johnson, and distinguished members of the Subcommittee, thank you for the invitation to appear before you today as you examine how to protect infrastructure against future disaster damage, how to lower the overall disaster costs, and to identify challenges facing the Federal Emergency Management Agency (FEMA) in responding to, recovering from, and mitigatIng against disasters.

I very much appreciate the Committee's continued focus on reducing the costs of Presidentially-declared disasters and believe that better protection of the built environment—whether public infrastructure or residential or commercial real estate—is part and parcel of the eventual solution.

Additionally, I would like to offer my continued appreciation to the whole Committee for its work over the years to keep the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-107) up to date and relevant for state, local, and—as of 2013—tribal governments dealing with emergencies and disasters that exceed their capabilities. The continuously updated Stafford Act by which FEMA operates today is a testament to the fact that the Congress understands that disasters and emergencies are non-partisan events and that statute governing how the federal government supports state, tribal, local, and territorial governments is a key piece of preparing for, protecting against, responding to, recovering from and mitigating all hazards.

How to Protect Infrastructure Against Future Disaster Damage

The best way to protect the built environment against future disaster damage is by building for strength and resilience—the ability to quickly recover—above and beyond the current known natural threats. At some point this becomes cost prohibitive, but the governments in this country, from the federal level all the way down to the most local units of government, currently subsidize risk in various ways beyond what would change societal behavior to build stronger and more resiliently.

While this Administration and Congress refuse to link it with climate change, the federal government is spending billions of dollars annually to deal with the effects of extreme weather and not nearly enough to combat future risk. I've included for the record links to two op-eds published in The Hill on January 30, 2017[1] as well as a follow-up published on April 5, 2017 in Newsweek[2], which highlight a few of the many significant examples.

---

[1] Alice Hill and Craig Fugate, Opinion Contributors. "Proper Infrastructure Investment Must Account for Climate Change." *TheHill*. 31 Jan. 2017. Web. 26 Apr. 2017. http://thehill.com/blogs/ballot-box/316938-proper-infrastructure-investment-must-account-for-climate-change

[2] Alice Hill and Craig Fugate, Opinion Contributors. "Proper Infrastructure Investment Must Account for Climate Change." *TheHill*. 31 Jan. 2017. Web. 26 Apr. 2017. http://www.newsweek.com/small-towns-trump-hurting-his-denial-climate-change-578261

Something that FEMA and the Obama Administration pursued with regard to resilience was the introduction of the Federal Flood Risk Management Standard (FFRMS, Executive Order 13690), as well as significant on the record public engagement to address any concerns prior to formal implementation of the FFRMS.

FFRMS required that all future federal investments in and affecting floodplains meet the level of resilience as established by the Standard. The Standard specifically requires agencies to consider current and future risk when taxpayer dollars are used to build or rebuild in floodplains. In implementing the Standard, federal agencies were to be given the flexibility to select one of three approaches for establishing the flood elevation and hazard area they use in siting, design, and construction:

- Utilizing best-available, actionable data and methods that integrate current and future changes in flooding based on science,
- Two or three feet of elevation, depending on the criticality of the building, above the 100-year, or 1%-annual-chance, flood elevation, or
- 500-year, or 0.2%-annual-chance, flood elevation.

The FFRMS built upon the work of the Hurricane Sandy Rebuilding Task Force, which announced in April 2013 that all Sandy-related rebuilding projects funded by the Sandy Supplemental (P.L. 113-2) must meet a consistent flood risk reduction standard. The Hurricane Sandy Rebuilding Strategy recommended that the federal government create a national flood risk standard for Federally-funded projects beyond the Sandy-affected region.[3]

Aside from federally-funded infrastructure investments being built to a higher standard, it is also important for governments receiving federal assistance for public infrastructure—FEMA's Public Assistance (PA) program—to obtain and maintain insurance on repaired or reconstructed facilities[4]. That said, there's a loophole that allows governments receiving PA to sidestep this requirement; a State Insurance Commissioner can certify that such coverage is unavailable. There is a cottage industry that assists PA recipients avoid insuring these investments, which have been paid for with at least with 75% federal dollars. Ultimately, the federal government can again be on the hook for repairing or replacing these investments the next time disaster strikes if they were not designed for resilience and/or adequately insured. This is an area where FEMA made improvements in enforcement during my tenure, but there is still room for my successor to build upon moving forward.

Finally, with regard to residential and commercial infrastructure, a confluence of perverse incentives lead to less resilient construction in more at risk areas. Commercial and residential real estate occupancy and development are economic engines in countless communities across the nation. Any effort that could adversely impact the bottom line for associated industries are avoided, whether it's regularly reviewing and adopting the latest international building and safety

[3] "Federal Flood Risk Management Standard (FFRMS)." *Federal Flood Risk Management Standard (FFRMS) | FEMA.gov*. Web. 26 Apr. 2017. https://www.fema.gov/federal-flood-risk-management-standard-ffrms

[4] 44 CFR 206.252(d) and 253(b)(1)

codes, voluntarily disclosing the annual risk of flood or other known natural hazard, having an understanding of future conditions based on the best available and actionable science, disputing updates to floodplain data because “it’s never flooded [there] before,” or moving the 20% of National Flood Insurance Program (NFIP) policies that are grandfathered or subsidized to actuarial soundness—reflecting the actual risk—because it’s politically dangerous.

Updating the existing built environment, as economically feasible and necessary, goes hand in hand with ensuring that new construction and reconstruction of damaged or destroyed facilities factor in resilience and reducing future risk. I testified earlier this year that there's a four-to-one benefit cost to the taxpayer for mitigation projects and the outcome is that disaster relief spending should ultimately be reduced in the out years because it costs significantly less to fund recovery for resilient construction following a disaster.[5]

When it is not cost-effective to update existing infrastructure, the federal government has seen limited success with buying out private property owners, but not enough. While, in the long run, recovery in a community that has successfully bought out high risk properties, the near term impacts can appear more economically significant and damaging than they actually are.

There are many easily identified solutions to better protect infrastructure, but it will be difficult at any level of government—especially in this politically-charged environment—to mandate a change that enhances the strength and resilience of the built environment at even a minimal cost to short term economic growth and prosperity.

How to Lower Overall Disaster Costs

When I appeared before this Subcommittee in January 2015, I thanked your efforts to pass the Sandy Recovery Improvement Act (SRIA) into law, authorizing several significant changes to the way FEMA delivers disaster assistance. SRIA, and the additional authorities it provided, have certainly aided recovery efforts associated with Hurricane Sandy and subsequent disasters, but there’s more that can be done to reduce overall disaster costs and allow FEMA to be a better steward of taxpayers’ investment in the Disaster Relief Fund (DRF).

SRIA required FEMA to make recommendations for the development of a national strategy to reduce costs on future disasters that should:

- Respect the constitutional roles and responsibilities of the different levels of government, as well as the private sector;
- Address vulnerability to damage from flooding, severe weather, and other hazards;
- Analyze gaps and duplication of emergency preparedness, response, recovery and mitigation at all levels of government; and

---

[5] "The Future of FEMA: Recommendations of Former Administrators." *House Committee on Homeland Security*. Web. 26 Apr. 2017. https://homeland.house.gov/hearing/future-fema-recommendations-former-administrators/

- Include recommendations on improving resiliency of states, local, and tribal communities to lower future response and recovery costs.[6]

The Agency's recommendations were submitted to Congress in September 2013[7]. FEMA took the additional step of publishing two Advance Notices of Proposed Rulemaking (first ANPRM[8], second ANPRM[9]) building upon one of the ideas in the report: that of a disaster deductible concept[10]. This can be a lengthy process and I encourage the Committee to continue to engage with the Agency as it sees fit.

From the summary of the initial ANPRM, "FEMA believes the deductible model would incentivize Recipients to make meaningful improvements in disaster planning, fiscal capacity for disaster response and recovery, and risk mitigation, while contributing to more effective stewardship of taxpayer dollars. For example, Recipients could potentially receive credit toward their deductible requirement through proactive pre-event actions such as adopting enhanced building codes, establishing and maintaining a disaster relief fund or self-insurance plan, or adoption of other measures that reduce the Recipient's risk from disaster events. The deductible model would increase stakeholder investment and participation in disaster recovery and building for future risk, thereby strengthening our nation's resilience to disaster events and reducing the cost of disasters long term."

There are numerous concepts for reducing federal disaster spending, either via statutory changes, voluntary administrative changes to declaration criteria, or similar changes as corrective action recommended by the the Department of Homeland Security Office of Inspector General or as a result of a finding of the Government Accountability Office. The Public Assistance deductible concept would help state, local, tribal, and territorial governments take more steps ahead of a disaster or emergency that would hopefully drive down federal costs or significantly slow the growth in disaster-related federal spending

Challenges Facing FEMA

---

[6] "Sandy Recovery Improvement Act of 2013." *Sandy Recovery Improvement Act of 2013* | *FEMA.gov*. Web. 26 Apr. 2017. https://www.fema.gov/sandy-recovery-improvement-act-2013

[7] "FEMA National Strategy Recommendations." *FEMA National Strategy Recommendations* | *FEMA.gov*. Web. 26 Apr. 2017. https://www.fema.gov/media-library/assets/documents/35064

[8] "Establishing a Deductible for FEMA's Public Assistance Program." *Federal Register*. 20 Jan. 2016. Web. 26 Apr. 2017. https://www.federalregister.gov/documents/2016/01/20/2016-00997/establishing-a-deductible-for-femas-public-assistance-program

[9] "Establishing a Deductible for FEMA's Public Assistance Program." *Federal Register*. 12 Jan. 2017. Web. 26 Apr. 2017. https://www.federalregister.gov/documents/2017/01/12/2017-00467/establishing-a-deductible-for-femas-public-assistance-program

[10] "Public Assistance Deductible." *Public Assistance Deductible* | *FEMA.gov*. Web. 26 Apr. 2017. https://www.fema.gov/deductible

I'll reiterate concerns I raised in my written testimony for the February 28, 2017 House Committee on Homeland Security on this matter.[11] The most significant issues that I believe the incoming Administrator must be aware of in order to succeed will be protecting the Agency's authorities; ensuring adequate funding for federal disaster relief; preserving the commitment of the federal government in the Robert T. Stafford Disaster Relief and Emergency Assistance Act to states and tribes; and ensuring that the federal government is properly investing in resilience and not subsidizing risky behavior.

It's vitally important that the political leadership team at FEMA understands the unique relationship of FEMA during times of crisis is in support of states and tribes, at the direction of the President and per the Stafford Act. Additionally, the FEMA Administrator has a unique operational relationship among Department of Homeland Security (DHS) components to report directly to the President during times of crisis, as Congress mandated in the Homeland Security Act as amended by the Post-Katrina Emergency Management Reform Act (PKEMRA, P.L. 109-295). So far, this Administration has continued in the same manner as the Obama Administration in this regard.

Despite its primary responsibility to governors and tribal leaders who can request federal assistance from the President, FEMA relies completely on the Congress for its authorities and appropriations. I cannot speak for my predecessors, but FEMA was relatively effective during my tenure as Administrator when it came to working with Congress when there was a need for supplemental appropriations or statutory changes to relevant authorities. It is vital that this line of communication and collaboration endures.

In my time at FEMA, there was not a single year when FEMA operated under an on-time appropriation. That year-to-year instability—while consistent—makes running the organization more challenging.

When Chief Paulison was tapped to lead the Agency in 2005, it was in the days immediately following Katrina's impact along the Gulf Coast and there were clear failures at all levels of government in the response to that event. In the aftermath of Katrina, Congress conducted vigorous oversight of the federal government's response to Katrina.

The outcome of this oversight was PKEMRA. It was landmark legislation drafted, debated, and ultimately enacted, out of frustration with FEMA's performance in response to Hurricane Katrina.

Congress designed PKEMRA to support and strengthen FEMA, and its sweeping restructuring requirements benefitted the Agency greatly. Today, FEMA has the authority and the autonomy it needs to assist communities as they prepare for, protect against, respond to, recover from, and mitigate against all potential hazards.

---

[11] "The Future of FEMA: Recommendations of Former Administrators." *House Committee on Homeland Security*. Web. 26 Apr. 2017. https://homeland.house.gov/hearing/future-fema-recommendations-former-administrators/

In 2005 when Katrina struck, FEMA was no longer an autonomous Agency. As a part of the two-year-old Department of Homeland Security, FEMA’s programs were split apart. Most of its disaster assistance activities were inside DHS’ Emergency Preparedness and Response Directorate (EP&R) while FEMA’s other programs were siloed elsewhere throughout the Department.

In debating PKEMRA, Congress permanently restructured FEMA’s functions back under a single operating component to improve the federal function of emergency management.

PKEMRA required FEMA to be a distinct entity and prohibited—by statute—any future changes to FEMA’s mission by the Department. The law also returned the Preparedness Directorate to FEMA, including the Fire Administration, and the programs under the Office of Grants and Training.

Congress also made permanent changes to FEMA leadership. PKEMRA mandates that to hold the position of FEMA Administrator, certain qualifications and experience are necessary (6 U.S.C. § 313(c)2). In addition, PKEMRA ensures that the FEMA Administrator is the principal advisor to the President on all matters relating to emergency management that the Administrator is assured a seat in the Cabinet, as required (6 U.S.C. § 313(c)4 and 6 U.S.C. § 313(c)5).

PKEMRA was enacted just thirteen months after Katrina made landfall. It was under Chief Paulison's leadership that the Agency began the tasks necessary to rebuild the Agency.

Unfortunately, as recently as 2016, there were attempts to undermine the protections Congress provided FEMA in PKEMRA when the full House Homeland Security Committee advanced "unity of effort" legislation with the intent of giving the Secretary of Homeland Security more control over the various operating components of the Department.

While some language was ultimately added to preserve the PKEMRA protections in the language that was added to the National Defense Authorization Act, future Agency leadership should be aware that there are still efforts in Congress and at the Department that would hinder FEMA's abilities to effectively respond, especially to a catastrophic event such as a Cascadia Subduction Zone- or New Madrid- earthquake.

The other great challenge that the Agency faces in the coming years is budgetary.

Following the enactment of the Budget Control Act (BCA), FEMA became an extremely lean operation; outside of the Disaster Relief Fund (DRF), there’s not much fat left to trim. I and my leadership team took sequestration seriously and looked at ways to maximize organizational efficiencies without sacrificing the Agency’s mission essential functions.

As for the DRF, the BCA was actually a short-term boon. Prior to BCA, the DRF had been inadequately funded through the regular appropriations process. Instead, the Agency relied on supplemental appropriations bills to be quickly enacted in the wake of significant events to replenish the DRF and fund recovery from emergencies and disasters, and operated this way year after year.

In 2011, as the Agency was responding to hurricanes Irene and Lee, the balance in the DRF got so low that the Agency implemented "immediate needs funding" (INF), meaning states and locals that were expecting FEMA funds to pay for recovery work stopped receiving federal dollars. The Agency had barely enough money to pay for ongoing response activities and had to stop funding recovery in communities all across the nation.

Appropriators knew that INF was a potential problem and the situation led to a formula being included in the Budget Control Act that would provide more stable and significant funding to the Agency based on a rolling ten-year average of disaster response and recovery costs.

This worked well for several years, but once the years that included Katrina, Rita, and Wilma dropped off the formula's average, the annual appropriation for the DRF ratcheted down.

At the end of Fiscal Year 2016, the Agency successfully managed response and recovery spending to the point that—even with Hurricane Matthew bearing down on the southeastern U.S.—FEMA still had adequate funds to get through the FY16 appropriation under which the federal government was operating without the need for a supplemental appropriation expressly for the DRF.

At the close of FY16, there was less than $100 million in the portion of the DRF set aside for major disasters. To put that in perspective, FEMA spent $1 billion in the first month following Sandy's landfall, so $100 million would not have lasted long had there been another significant disaster in addition to Matthew prior to the expiration of the fiscal year.

In the Budget Control Act framework, Congress designed a failsafe for supplemental disaster spending that would count toward the DRF's formula and then another failsafe for "emergency" spending beyond the disaster space that would not count toward the DRF formula, but the Subcommittee is likely very aware of the difficulty to pass any appropriations measure in regular order.

Following Sandy, the 112th Congress adjourned after its disaster supplemental attempt was blocked. It took the newly installed 113th Congress three weeks to pass a supplemental to replenish the DRF. While FEMA had the resources needed to continue with response and recovery operations, there were many federal departments and agencies with disaster-related recovery needs that were left unfinished while needed funds were debated and ultimately appropriated by the Congress.

Congress must re-evaluate the formula that drives the DRF's annual appropriation as well as the potential budgetary space beyond the appropriation for disaster supplementals, and then the space for "emergency" supplementals beyond the disaster supplemental space.

This disaster supplemental space also became an area of contention during the last few years as the House Natural Resources Committee and other Members—including some on this Committee—looked for ways to fund wildfire suppression on federal lands for the Department of Agriculture (USDA) and the Department of the Interior (DOI).

Congress must not amend the Stafford Act to provide a Presidential declaration for an event that would give a federal department or agency access to the Disaster Relief Fund or the disaster budget space to meet their own mission. Congress established the Stafford Act framework of federal assistance expressly to support state, local, tribal, and territorial governments, not to serve as a backstop for legislative gridlock preventing an appropriations and budgeting solution to challenges that other federal entities may face.

In November 2016, the Obama Administration proposed a legislative fix that would have solved the issues that USDA, DOI, and DHS/FEMA all faced, but Congress did not have an opportunity to debate or act on the proposal given the reluctance to amend the Budget Control Act.

It is imperative that this issue is dealt with soon, otherwise you and your colleagues will again be forced to debate supplemental disaster appropriations bills on a recurring basis, all while FEMA's ability to respond and recover is hindered.

Another challenge facing FEMA is the statutorily-mandated National Flood Insurance Program (NFIP). With the passage of Biggert-Waters Flood Insurance Reform Act of 2012, the Congress tried to charge all policyholders rates that reflect their true risk of flooding. It then repealed those changes less than two years later when interest groups waged a campaign alleging widespread premium increases of tens of thousands of dollars.

While there were a handful of policyholders who may have legitimately seen very high premiums, it was because their properties were in extremely high-risk areas. As mentioned earlier, the federal government has been subsidizing that risk and incentivizing future risk in areas we know will be impacted by extreme weather and sea-level rise.

Another difficult conversation that the Congress must have about risk subsidization regards the affordability of the NFIP for its policyholders. When the Congress established the NFIP, it did so to create a risk backstop for the mortgage industry; it was not looking at future development or the fact that the federal government was going to be running an insurance company for a pool of high-risk policyholders.

While the NFIP has many policyholders who can afford to live in high-risk areas in desirable coastal communities, there are many other policyholders who live in or near floodplains because they are lower income and that is where affordable housing is located inland.

The NFIP must be reauthorized by the end of FY17 and it is imperative that the House Financial Services Committee and Senate Banking Committee take into consideration the findings of the

National Academies of Sciences, Engineering, and Medicine—which Congress commissioned to study the matter to better inform the Congress on premium affordability—ahead of the next major reauthorization.

The Agency currently has the authorities and resources needed for success, but they are both in jeopardy. It is vitally important for the next Administrator to continue building upon the strides the Agency has made since Katrina and working with Congress to ensure authority and funding are not diminished.

Conclusion

This Subcommittee has endured as a valuable partner to the Agency and the emergency management community for decades. Disaster spending has been an identified challenge for some time now and there are many paths down which Congress, the Administration, and/or the Agency may go to address the issue.

You have my commitment that I will continue sharing my expertise when it comes to disasters and emergency management and I look forward to seeing a meaningful reduction in federal disaster spending while improving resiliency nationwide.

Thank you again for the opportunity to testify before you today.