

Disaster Recovery, Hazard Mitigation, And the Stafford Act

- The American Public Power Association (APPA) supports the FEMA Loan Interest Relief Act, which would require the Federal Emergency Management Agency (FEMA) to pay interest to public power utilities that take out loans to cover costs that are eventually repaid by FEMA.
- APPA supports the Promoting Opportunities to Widen Electrical Resilience Act of 2024 (POWER Act), which would allow cost-effective hazard mitigation activities as part of power restoration.
- APPA strongly opposes FEMA’s rule to allow itself to pause the three-year limit on attempts to “claw back” public assistance payments to public power utilities.

Background

The federal government provides assistance to state and local governments for major disasters or emergencies that disrupt the normal functioning of governments and communities. This public assistance is primarily provided and overseen by FEMA under authorization of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (P.L. 93- 288, as amended). The Stafford Act also authorizes FEMA to assist in planning for disasters and emergencies and for disaster mitigation planning, design, and investments. Categories of assistance that public power utilities generally receive include debris removal, emergency protective measures, and utility restoration and reconstruction. Public power utilities also receive assistance in planning and design for hazard mitigation and in making disaster mitigation investments.

In some instances, FEMA will decide that public assistance was not appropriate after payment has already been made. In those instances, it can seek to recover (or “deobligate”) such payments either directly or through an administrative offset of future federal payments. Deobligation can result because FEMA has discovered that the type of project is not appropriate, that the payment was duplicative, or quite often, because the recipient failed to follow the *Federal Acquisitions Regulations*, a 1,917-page document of rules for making purchases with assistance funds. In fact, the Department of Homeland Security’s Office of Inspector General has said that if procurement requirements are not followed, FEMA can and should seek deobligation “even if costs were otherwise reasonable, and the grantee or sub-grantee otherwise accomplished the purpose of the grant” (OIG-16-126-D, Sept. 2, 2016).

The Disaster Assistance Improvement Act of 2018 (P.L. 115-254) provides that FEMA may only seek to deobligate funds if it has notified the recipient of its intent to do so within three years of the transmission of the final expenditure report for the specific project. However, FEMA upended the intent of this three-year limit in a rule published in October 2020, and reaffirmed in June 2021, by allowing itself to pause the new statute of limitations whenever it has additional questions about a project’s final report.

Current policies also make it challenging to use FEMA public assistance funds for hazard mitigation as part of, or after, disaster strikes. First, hazard mitigation funds must be approved up front by FEMA, and generally, FEMA will not provide such funds for equipment that has already been restored to working order. As a result, a utility is often faced with the untenable choice of waiting for approvals before restoring power.

Congressional Action

In April 2023, Representatives Neal Dunn (R-FL), Darren Soto (D-FL), and Garret Graves (R-LA) and Senators Marco Rubio (R-FL) and Rick Scott (R-FL) introduced the FEMA Loan Interest Payment Relief Act in the House and Senate (H.R. 2672 and S. 1180, respectively) to reimburse public power utilities, other local governmental entities, and rural electric cooperatives for interest expenses on loans to cover costs that will eventually be repaid by FEMA. The bill was approved by voice vote by the House of Representatives in December 2024. Unfortunately, no action was taken on the legislation by the Senate. APPA supports the reintroduction and consideration of the bill in the 119th Congress.

In January 2025, Representatives Val Hoyle (D-OR) and Mike Ezell (R-MS) introduced H.R. 164, the POWER Act. The bill would allow FEMA to reimburse an electric utility to receive assistance for carrying out “cost-effective hazard mitigation activities” in combination with power restoration activities. It would also allow an electric utility that receives assistance for emergency power restoration to also receive subsequent hazard mitigation assistance for that equipment. The bill was passed by the House by a vote of 419 to 2 on January 16, 2025. APPA supports the consideration of the POWER Act in the Senate.

On January 24, 2025, President Donald Trump announced he would like to eliminate FEMA and create the Federal Emergency Management Agency Review Council, a 20-member council led by the secretaries of Defense and Homeland Security and other presidential appointees. FEMA is authorized by statute and any wholesale reform of its functions would have to be approved by Congress, so the council’s main goal is to provide by October 21, 2025, a report to the President on the adequacy of FEMA’s past responses, and the arguments for and against reforming the agency.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 54 million people that public power utilities serve and the 96,000 people they employ.