PUBLICATION

Three Questions on Disaster Response with Ernie Abbott, Of Counsel, Baker Donelson

Authors: Ernest B. Abbott, Sheila P. Burke
November 17, 2017

Ernest B. Abbott is former General Counsel of the Federal Emergency Management Agency (FEMA) and leads Baker Donelson's Disaster Recovery and Government Services Team.

What is the status of funding for rebuilding after the recent disasters in Florida, Georgia, Texas, Puerto Rico, and the U.S. Virgin Islands, and what can we expect moving forward?

After each of the big disasters that have plagued the nation in the last few months – Hurricanes Harvey, Irma, and Maria, and wildfires in California, it was apparent that the funds available in the Disaster Relief and National Flood Insurance Funds were inadequate. Congress has responded by enacting and planning to appropriate federal funds for rebuilding in stages, as the scale of funding needs became clear.

The first of these measures, an emergency $15.2 billion appropriation to begin repairing the damage caused by Hurricane Harvey, was approved on September 8. The bill, which reauthorized the National Flood Insurance Program (NFIP) through the end of the year, appropriated $7.4 billion for direct assistance for victims of Hurricane Harvey, $450 million for the Small Business Administration to help small businesses get back on their feet, and an additional $7.4 billion in community development block grants. Initially the measure was intended to provide enough funding for the FEMA disaster relief fund and the NFIP to continue operations through the end of the year, buying enough time for Congress to provide a second round of funding as part of the regular appropriations process.

Within weeks of the measure's passage, Hurricane Irma traversed the Caribbean and then Florida, Georgia, and South Carolina. Shortly thereafter, Hurricane Maria dealt catastrophic damage to Puerto Rico. These storms quickly drained the funds appropriated in September and forced Congress to pass another emergency appropriations measure. This bill, signed into law by President Trump on October 26, provides another $36 billion in disaster relief funding, including $18.7 billion for the FEMA disaster relief fund, $16 billion to address NFIP debt, $576.5 million for wildfire recovery efforts, and $1.27 billion for disaster food assistance for Puerto Rico. It now seems that a third emergency appropriation may be needed in November.

Looking forward, there will certainly be additional disaster funding included in the FY18 appropriations package. Officials on the ground in disaster-affected communities are still assessing the damage and trying to determine rebuilding requirements eligible for relief under the Stafford Act (the federal law that governs most emergency recovery). Federal officials are also studying the possibility of providing additional help outside of the Stafford Act, to include housing programs and health programs, among others. It is likely that one or more of these future appropriations bills will become a vehicle for enacting substantive changes to the Stafford Act (under which most FEMA disaster assistance is provided) to address particular recovery and response challenges. Congress may attempt to reform the NFIP to reduce future losses, as well.

How do FEMA, federal disaster funds, HUD, affected states, and other actors interrelate, and how should impacted cities and municipalities navigate the governmental alphabet soup?

The first consideration is that all federal disaster funding takes the form of a federal grant. This might seem obvious or trivial, but many entities receiving disaster assistance do not realize that they must comply with the same extensive procurement regulations applicable to all federal grant programs. Because of this, having a strong compliance program in place before a disaster is essential both to receive federal disaster response money and to ensure the federal government does not attempt to "claw back" that money when/if non-compliance is discovered.

States and localities impacted by disasters are encouraged to seek assistance by reaching out to my team at Baker Donelson. The regulations surrounding federal funding in disasters are complicated, and FEMA's enforcement of the regulations is getting much more strict.

In addition to FEMA disaster funding, there are a variety of state and federal programs, tax incentives, and non-profit initiatives that provide funding for disaster-impacted communities. While navigating this patchwork set of programs, each with its own set of acronyms, policies, and regulations, can be difficult, engaging with these programs can really help maximize the availability of funding for recovery and the ability to rebuild your community in a better, stronger, and more resilient manner.

What do you see as the next disaster response challenge that the U.S. government will have to face in the coming years?

It seems clear that the frequency and severity of major disasters is increasing – as is the cost of response and recovery from those disasters. The fiscal impact of disasters may cause the nation to rethink the way it authorizes and pays for disaster recovery. Hopefully, it will also spur programs and incentives to build more resilient communities.

Thus, communities may face changes or restrictions in funding of disaster recovery. However, this may come with programs incentivizing or even requiring communities to look at increasing elevation in flood prone areas, acquiring property for open space, adopting and enforcing strong building codes, and undertaking a variety of other initiatives to limit damage and make rebuilding easier. Fundamentally, the only way we will reduce the financial cost, hardship, and loss of life associated with disasters is through a systematic review of the hazards faced by a community that includes a survey of built infrastructure to assess the vulnerability of structures and the development of proposals to reduce that vulnerability.