

PUBLICATION

FEMA Now Accepting Comments on Changes to its Public Assistance Program

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Here Ye! Here Ye! Major changes to federal regulation and policy are happening now!

FEMA's new proposed policy guide is open for public comment through August 16 AND comments to FEMA's proposed changes to 44 Code of Federal Regulations (CFR) are open for public comment through September 3.

The Public Assistance (PA) program is the grant program by which FEMA provides financial assistance to state, local, tribal, and territorial governments and certain eligible private non-profit entities after they are impacted by a presidentially-declared disaster. FEMA provides this assistance under authority in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, implemented by regulations in Title 44 Part 206 of the U.S. Code of Federal Regulations, and clarified by policy primarily located in its Public Assistance Program and Policy Guide (PAPPG). Both 44 CFR changes and PAPPG changes are currently open for public comment.

FEMA last updated the PAPPG with Version 4 in 2020, but now has recently released its draft Version 5 for public comment [here](#). The 60-day public comment period is now open through August 19, and FEMA is hosting a series of one-hour webinars to encourage public comments, which can be found [here](#).

The Baker Donelson Disaster Recovery Team is currently reading through the 232-page document to submit comments on topics of interest to our clients, however, some items catching our attention include:

- A responsibility shift from FEMA to the states to conduct initial damage assessment prior to requesting joint preliminary damage assessments;
- An increased focus on climate change;
- A push to disallow private non-profits any emergency work except done through agreement with a governmental entity;
- Adding language that noncompliance with FEMA policy jeopardizes PA funding;
- Re-introducing FEMA's Alternative Dispute Resolution process;
- Confirmation that FEMA Validate as You Go (VAYGo) could result in Determination Memos and therefore the appeal process; and
- Change to the Request for Replacement by adding, "Re-running the calculation is appropriate if there is an error in the initial calculation by FEMA, but not because initial estimates are revised."

The team is also reviewing the lengthy proposed changes to 44 CFR. These changes by FEMA cite amendments they claim are needed from changes in law including the Post-Katrina Emergency Management Reform Act of 2006, Sandy Recovery Improvement Act of 2013, the Bipartisan Budget Act of 2018, and the Disaster Recovery Reform Act, and to enact recommendations of its National Advisory Committee. Those changes include such things as:

- Defining resilient and resiliency;
- Incorporating the requirement to use the latest codes and standards; and

- Prohibition of onsite grouping to meet minimum thresholds.

In our experience, FEMA will cite a lack of comment to changes for support in the future when it uses the new language of either federal regulation or policy to deny costs. If you would like to talk with us about the content of the proposed updates to the PAPPG, 44 CFR, or potential comments on either; or other issues related to federal disaster assistance, please contact [Erin J. Greten](#), [Danielle M. Aymond](#), or any member of Baker Donelson's [Disaster Recovery Team](#).