



December 19, 2019

Mr. Peter T. Gaynor
Acting Administrator
Federal Emergency Management Agency
500 C Street, SW
Washington, DC 20472

Dear Acting Administrator Gaynor:

The undersigned national associations representing state and local governments respectfully request that the U.S. Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) establish and maintain, prior to the proposal of any regulatory policies, a joint series of formal federalism consultations in accordance with Executive Order (EO) 13132 (Federalism, August 19, 1999) in response to Sections 1232 and 1239 of the Disaster Recovery Reform Act (Division D, Public Law 115-254).

We are concerned about the lack of consultation with states and local governments prior to FEMA's forthcoming rule that will make changes to the Per Capita Impact Indicator (PCII) and new regulations and policies governing consideration of local impact as part of the disaster declaration decision-making processes

The PCII dictates when a disaster is large or costly enough to involve critical FEMA resources in circumstances where state capacity may be overwhelmed by the impact of a given catastrophic event. Altering the PCII has the potential to burden state and local budgets with emergency response and recovery costs while limiting these jurisdictions' abilities to prioritize resources on more immediate infrastructure, parks and conservation and other projects based on actual needs.

Additionally, state and local governments do not have the fiscal capacity of the federal government, and unlike the federal government, 49 states have a legal requirement of a balanced budget. This fact alone greatly constricts states' ability to absorb additional disaster costs.

Early consultation with state and local governments before a rule is developed or proposed is paramount to developing sound disaster policy. Congress recognized the importance of this early

consultation when it included language in the Disaster Recovery Reform Act (DRRA) expressly mandating that the administrator of FEMA “in determining the capacity of a jurisdiction to respond to disasters, and *prior to the issuance of such a rule* ... shall engage in meaningful consultation with relevant representatives of State, regional, local, and Indian tribal government stakeholders.”

No entity can anticipate a jurisdiction’s capacity to respond to a disaster better than state and local governments themselves. The inclusion of this language was meant to ensure that FEMA consider this important perspective *before* drafting changes to the way disaster assistance is calculated, based on such capacity; to accord state and local governments the respect they are due as intergovernmental partners; and to recognize that disaster assistance is a shared responsibility among federal, state and local levels of government.

We are concerned that FEMA has misinterpreted the mandatory consultation requirement specified in the DRRA. The agency may have mistakenly assumed that consultation with state and local governments is not required prior to issuing a notice of proposed rulemaking that would place greater financial burdens on state and local taxpayers. State and local input into the planning process is vitally important so that all levels of government may have a role in crafting the proposed changes to the PCII with special consideration for their impact on these jurisdictions. Likewise, State and local governments should be consulted in setting new policies and regulations for evaluation of local impacts used to inform FEMA’s recommendations to the President as part of the disaster declaration process.

Our organizations stand ready to work with you throughout the consultation process of the DRRA to ensure that sound disaster policy is achieved.

Sincerely,

National Governors Association

National Association of Counties

National Conference of State Legislatures

National League of Cities

The United State Conference of Mayors