

**NATIONAL CONFERENCE OF STATE LEGISLATURES
NATIONAL LEAGUE OF CITIES
THE UNITED STATES CONFERENCE OF MAYORS**

March 18, 2016

W. Craig Fugate
Administrator
Federal Emergency Management Agency
U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

RE: **FEMA-2016-0003**

Dear Administrator Fugate:

We write on behalf of the elected leaders of state and local governments in response to FEMA's request for comments to the advance notice of proposed rulemaking considering the establishment of a disaster deductible for states and localities in order to receive FEMA disaster relief funds. We appreciate the opportunity to comment on this initiative early, before a rule is proposed.

While we appreciate FEMA's goals of incentivizing pre-disaster planning and mitigation and reducing disaster costs overall, we urge FEMA to exercise caution before altering the current statutory scheme. We have several serious concerns with this proposal. Among them:

- Under current law, FEMA does not have the authority to lower its share of disaster recovery costs. The Robert T. Stafford Disaster Relief and Emergency Recovery Assistance Act, Public Law 93-288, as amended 42 U.S.C. 5121 et seq. requires the federal government to contribute not less than 75 percent of the eligible cost for public assistance in the event of a major disaster. A disaster deductible that reduces the federal share below this 75 percent threshold in the absence of congressional legislation violates FEMA's own statute. This suggests that Congressional action would be necessary for FEMA to lower its share of disaster recovery costs.
- The proposal raises a host of intergovernmental issues that could aggravate state-local relations. For example, there will be differences in efforts to increase resiliency between a state and the local governments within it, as well as among local governments within a state. How would FEMA take these differences into account when determining credits toward the deductible? How would it assure that those governments that have taken positive steps will not be penalized when a disaster occurs because of the inaction of other governments within the state? We maintain that leaving these questions unanswered will lead to an administrative nightmare.
- Quick recovery from a disaster is important to all levels of government – federal, state and local. It is important that FEMA do nothing that could slow down the

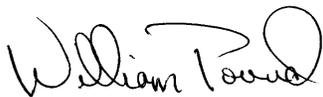
distribution of funds that contribute to that recovery. We are concerned that this proposal adds additional administrative processes to a system that is already burdened.

- State and local governments do not have the fiscal capacity of the federal government. They have to balance their budgets, and state laws and initiatives generally govern local revenue raising capacity. Among the many relevant factors that come into play in the state and local appropriations process is the condition of a state's or locality's economy. While intentions are good, states and localities are not always able to meet fiscal goals in a given year and must make difficult choices on how best to allocate limited funds. The current proposal could impose arbitrary financial obligations on states and localities, as well as shift costs that are required by law to be borne at the federal level, to states and localities.
- Because of this reduced fiscal capacity, it would be difficult for some states and localities to absorb additional costs when a major disaster occurs. Federal funding is provided to help state and local governments, individuals, and businesses recover when an event occurs which goes beyond their capability to respond – physically or fiscally. A recent example is Hurricane Katrina, which hit hardest in a poor city in a poor state.

We believe FEMA's proposal of a disaster deductible is ill-advised and should not go forward. If FEMA does decide to proceed with this proposal, we hope that you will begin by identifying the many varying roles, responsibilities and capabilities of state and local governments in pre-disaster planning and mitigation across the country and take into account state and local fiscal capacity and constraints. Any proposed rule must be flexible enough to accommodate these differences.

Further, we request that you continue to engage in serious consultation with FEMA's state and local partners in an effort to assure that any proposed rule is realistic and workable.

Sincerely,



William T. Pound
Executive Director
National Conference of State Legislatures



Clarence Anthony
CEO and Executive Director
National League of Cities



Tom Cochran
CEO and Executive Director
The United States Conference of Mayors