

GAO

Report to the Chairman, Subcommittee
on VA, HUD and Independent Agencies,
Committee on Appropriations, U.S.
Senate

May 1996

DISASTER ASSISTANCE

Improvements Needed in Determining Eligibility for Public Assistance





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-271543

May 23, 1996

The Honorable Christopher S. Bond
Chairman, Subcommittee on VA, HUD
and Independent Agencies
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

As requested, we are reporting on the Federal Emergency Management Agency's (FEMA) procedures for determining the eligibility for assistance, under FEMA's public assistance program, of state and local governments and other recipients following disasters, the controls used to ensure that disbursements made under the program are in accordance with the work authorized by FEMA, and possible options to modify FEMA's eligibility criteria. The report contains recommendations to the Director of FEMA.

We are sending copies of this report to the appropriate congressional committees; the Director, FEMA; the Director, Office of Management and Budget; and the President, National Emergency Management Association. We will also make copies available to other interested parties upon request.

If you or your staff have any questions, please call me on (202) 512-7631. Major contributors to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in cursive script that reads "Judy A. England-Joseph".

Judy A. England-Joseph
Director, Housing and Community
Development Issues

Executive Summary

The Federal Emergency Management Agency's (FEMA) public assistance program funds the repair of eligible public and private nonprofit facilities—such as roads, government buildings, utilities, and hospitals—that are damaged in natural disasters. Under the program, FEMA has obligated over \$6.5 billion for disasters that occurred during fiscal years 1989 through 1994. Concerned about the growing costs, the Chairman of the Subcommittee on VA, HUD and Independent Agencies, Senate Committee on Appropriations, asked GAO to

- review FEMA's criteria for determining eligibility for public assistance,
- determine how FEMA ensures that public assistance funds are expended only for eligible items, and
- identify changes in eligibility that could lower the costs of public assistance in the future.

Background

When disasters such as floods, tornadoes, or earthquakes strike, state and local governments are called upon to help citizens cope. FEMA may provide assistance if the President, at a state governor's request, declares that an emergency or disaster exists and that federal resources are required to supplement state and local resources. The 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 and following) authorizes the President to issue major disaster or emergency declarations and specifies the types of assistance the President may authorize. The assistance includes temporary housing and other benefits for individuals as well as public assistance.

FEMA may make public assistance grants to state and local governments and certain nonprofit organizations for three general purposes: the removal of debris, emergency protective measures,¹ and permanent restoration. Generally, the grants are to cover not less than 75 percent of the eligible costs. Over the years, the Congress has increased eligibility for public assistance through legislation that expanded the categories of assistance and/or specified the persons or organizations eligible to receive the assistance. FEMA is responsible for developing regulations and guidance to implement the program.

Following a disaster declaration, FEMA helps survey damaged facilities and prepares damage survey reports that contain estimates of repair costs. Officials in FEMA's regional offices make the initial determinations of

¹Emergency protective measures are activities undertaken to save lives and protect the public's health and safety; examples include search and rescue operations, security measures, and demolition and removal of damaged structures.

eligibility. The applicants may appeal these decisions, first to the regional office and subsequently to FEMA headquarters.

Results in Brief

FEMA's criteria for determining (1) the extent to which the permanent restoration of disaster-damaged public facilities is eligible for funding and (2) the eligibility of certain private nonprofit facilities are ambiguous. Also, FEMA has not systematically updated or disseminated to regional officials its policy changes affecting eligibility. Clear and up-to-date criteria are needed because eligibility decisions effectively determine the level of federal spending for public assistance. Furthermore, in large disasters FEMA often uses temporary personnel with limited training to help prepare and process damage survey reports. Without clear and up-to-date criteria, inconsistent or inequitable eligibility determinations and time-consuming appeals may be more likely to occur.

FEMA relies on states (the grantees for all public assistance grants) to ensure that expenditures are limited to eligible items. The states certify to FEMA at the completion of each subgrantee's project (subgrantees are state and local government agencies, nonprofit organizations, and other recipients) and at the closeout of each disaster that all disbursements of public assistance grants have been in accordance with the approved damage survey reports. Additional controls over disbursements include audits of some subgrantees by (1) independent auditors pursuant to the Single Audit Act of 1984² and (2) FEMA's Office of Inspector General, with possible augmentation by state audit agencies.

Public assistance program officials in FEMA's 10 regional offices identified a variety of options that, if implemented, could reduce the costs of the public assistance program. Among the options recommended most strongly were placing limits on the appeals process; eliminating eligibility for some facilities that generate revenue, lack required insurance, or are not delivering government services; and limiting the impact of codes and standards. Implementing these options might require amending the Stafford Act and/or FEMA's regulations.

²The Single Audit Act generally requires that entities receiving over \$25,000 annually in federal grant funds have an independent audit (see ch. 3).

Principal Findings

Clearer Criteria Are Needed to Determine Eligibility

GAO's review of FEMA's regulations and implementing guidance, and discussions with FEMA officials responsible for making eligibility determinations, revealed a need for clarifying the criteria related to the standards (building codes) to which damaged facilities should be restored. Generally, FEMA's regulations provide that the agency will provide funding to restore an eligible facility on the basis of its design as it existed immediately before the disaster and in accordance with the applicable standards. For a number of reasons, determining what standards are "applicable" can be contentious. One reason is that FEMA may fund the restoration to standards that were established after the damage occurred. Following the January 1994 Northridge (California) earthquake, a decision on assistance for restoring damaged hospitals was delayed for 2 years because of a dispute over which standards were applicable.

Similarly, the criteria for determining the eligibility of certain private, nonprofit facilities are unclear. The Stafford Act and FEMA's regulations provide that private nonprofit facilities that "provide essential services of a governmental nature to the general public" may be eligible for assistance. Because of this criterion's ambiguity, FEMA officials have found it difficult to interpret and apply. FEMA's Inspector General has cited examples of private nonprofits that do not appear to provide essential government services, yet have received public assistance funding. For example, following the Northridge earthquake, a small performing arts theater received about \$1.5 million to repair earthquake damage because it offered discount tickets to senior citizens and provided acting workshops for youth and seniors.

Clear criteria are important for controlling federal costs and helping to ensure consistent and equitable eligibility determinations. For example, depending on which set of standards were "applicable," FEMA's costs of restoring one of the hospitals damaged in the Northridge earthquake would have ranged from \$3.9 million to \$64 million. Furthermore, in large disasters FEMA often uses temporary personnel with limited training to help prepare and process damage survey reports, which are used in determining the scope of the work eligible for funding.

According to FEMA regional officials, the decisions made in determining eligibility following one disaster are not systematically codified or

disseminated to FEMA personnel to serve as a precedent in subsequent disasters. FEMA has supplemented its regulations with a manual published in draft in 1992 and with policy memorandums. The manual was intended to be supplemented with guidance, examples, and training to clarify the eligibility criteria and help ensure their consistent application; because of competing workload, this did not occur.

FEMA and other officials recognize the need to clarify the criteria and improve policy dissemination. At a January 1996 hearing,³ the Director of FEMA noted that in previous disasters, FEMA staff worked without having policies in place that addressed public assistance, making eligibility determinations difficult. FEMA plans to republish and subsequently update the public assistance manual and has begun offering a new training course for officials who prepare damage survey reports.

FEMA Relies on State Certifications and Independent Audits to Ensure Eligibility of Expenditures

In accordance with a governmentwide effort launched in 1988 to simplify federal grant administration, FEMA relies on states—in their role as grantees—to ensure that expenditures are limited to eligible items. The states are responsible for disbursements to subgrantees and for certifying at the completion of each project undertaken by a subgrantee and at the closeout of each disaster that all disbursements have been proper and eligible under the approved damage survey reports.

Independent audits serve as a further check on the eligibility of the items funded by public assistance grants, although the audit coverage is somewhat limited. The FEMA Inspector General audits recipients on a selective basis and attempts to audit any disaster when asked to by a FEMA regional office. For a number of reasons, federally required single audits may not include public assistance funds from FEMA. For the 4-year period ending September 30, 1995, the FEMA Inspector General received 219 such reports, 17 of which questioned disaster assistance expenditures.

Changes to Eligibility Criteria Could Reduce the Public Assistance Program's Costs

Because the public assistance officials in FEMA's 10 regional offices are involved in the day-to-day operations of the public assistance program, giving them a high degree of expertise, GAO obtained those officials' recommendations for reducing the costs of future public assistance. GAO also asked the officials to identify the potential obstacles to implementing those recommendations. GAO asked the National Emergency Management

³Hearings before the Subcommittee on Government Management, Information, and Technology, House Committee on Government Reform and Oversight, Northridge, California, January 19, 1996.

Association, which represents state emergency management officials, to respond to the options that the FEMA officials generated because implementing many of the options would affect the states. Because the available records did not permit quantifying the impact of each option on past public assistance expenditures, and because future costs will be driven in part by the number and scope of declared disasters, the options' impact on the public assistance costs of future disasters is uncertain.

Following are the options that (1) the FEMA regional officials strongly recommended and (2) the National Emergency Management Association endorsed for further consideration:

- Better define which local authorities govern the standards applicable to the permanent restoration of damaged facilities.
- Limit the time period following a disaster during which the authority can establish new standards applicable to the restoration.
- Eliminate eligibility for facilities that are owned by redevelopment agencies and are awaiting investment by a public-private partnership.
- Restrict the eligibility of public facilities to those being actively used for public purposes at the time of the disaster.
- Reduce the number of times that recipients may appeal a decision by FEMA on the eligibility of work.
- Improve insurance requirements by (1) eliminating the states' current authority to waive the mandatory purchase of property insurance otherwise required as a condition of FEMA's financial assistance and (2) requiring applicants to obtain at least partial insurance, if it is reasonably available.

Additional options strongly recommended by the FEMA officials or endorsed for further consideration by the National Emergency Management Association are discussed in chapter 4.

Recommendations

GAO recommends that the Director of FEMA issue criteria that more clearly and comprehensively identify what facilities and work are eligible for public assistance and develop a system for disseminating these criteria and future changes in the criteria to FEMA regional staff. GAO also recommends that the Director determine whether the options identified by FEMA officials should be implemented and, if so, take action to implement them, including, if necessary, proposing changes to the legislation and/or FEMA's regulations.

Agency Comments

GAO provided a draft of this report to FEMA for its review and comment. In responding, the Director of FEMA commented that the report is clear in its presentation and constructive in its recommendations and agreed in principle with the recommendations. Specifically, the Director stated that FEMA (1) supports the issuance of criteria that more clearly and comprehensively identify what facilities are eligible for public assistance and (2) will propose changes in regulations as policy decisions are made on the options suggested by GAO, FEMA officials, the FEMA Inspector General, the National Emergency Management Association, and others.

The Director also commented that there are places in the report where another perspective is needed for balance. Specifically, the Director commented that the report should (1) not attribute the magnitude of increasing disaster assistance costs to the lack of clarity in the eligibility criteria, (2) clarify the management oversight function of FEMA's architect and engineering studies, and (3) point out that FEMA is more involved in verifying the eligibility of the costs of large projects. GAO modified the report where appropriate in response to these comments. The letter from the Director of FEMA and GAO's response are in appendix III.

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Abbreviations

CDBG	Community Development Block Grant
DSR	damage survey report
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
GAO	General Accounting Office
HUD	Department of Housing and Urban Development
NEMA	National Emergency Management Association
OIG	Office of Inspector General
OMB	Office of Management and Budget
PNP	private nonprofit organization
USDA	U.S. Department of Agriculture

Introduction

When disasters such as floods, tornadoes, or earthquakes strike, state and local governments are called upon to help citizens cope. Assistance from the Federal Emergency Management Agency (FEMA) may be provided if the President, at a state governor's request, declares that an emergency or disaster exists and that federal resources are required to supplement state and local resources. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 and following) authorizes the President to issue major disaster or emergency declarations and specifies the types of assistance that the President may authorize. The scope of authorized assistance is smaller for emergencies than for major disasters.

The Public Assistance Program

Generally, FEMA's public assistance program (also called the "infrastructure" program) provides financial and other assistance to restore or rebuild disaster-damaged facilities that serve a public purpose.¹ Under the Stafford Act, FEMA may make public assistance grants to state and local governments and certain nonprofit organizations for the repair of a range of facilities, including government buildings, water distribution systems, parks and recreational facilities, and public utilities. Generally, the grants are to cover not less than 75 percent of eligible costs. The act also provides that FEMA's grants for permanent restoration may include work designed to mitigate the effects of future disasters—in effect, to lessen or prevent future damages by making the facilities better able to withstand disaster events. As of August 1995, FEMA had obligated a total of over \$6.5 billion (constant 1995 dollars) in public assistance grants for major disasters declared during fiscal years 1989 through 1994.²

Assistance Is Provided for a Variety of Facilities

Generally, FEMA provides public assistance grants to repair or restore the facilities of states, municipalities, and other local government entities. In addition, grants may go to private, nonprofit organizations that own and operate certain types of damaged facilities. The grants are made for three general purposes: debris removal, emergency protective measures, and permanent restoration. Emergency protective measures are activities undertaken to save lives and protect the public's health and safety; examples include search and rescue operations, security measures, the provision of temporary transportation or communication facilities, and

¹FEMA also provides assistance to individuals, such as disaster-related unemployment benefits, temporary housing, and cash grants for clothing and medical expenses.

²We obtained detailed cost data for disasters during fiscal years 1989 through 1994 because (1) FEMA's data for these years were the most complete and (2) disaster assistance legislation was substantively revised in 1988.

demolition and removal of damaged structures that pose a safety threat to the general public.

Generally, permanent restoration work is aimed at restoring a facility to perform its pre-disaster function; however, it may include work designed to mitigate the effects of future disasters. FEMA categorizes facilities eligible for permanent restoration as follows:

- Roads and bridges—non-federal-aid roads, highways, and bridges.³
- Water control facilities, including dams, levees, drainage channels, shore protection devices, and pumping facilities.
- Buildings and equipment, including the contents of buildings as well as equipment such as vehicles (for example, fire trucks or police cars).
- Utilities.
- Parks, recreational, and other facilities, including playground equipment, swimming pools, boat docks and piers, bath houses, tennis courts, picnic tables, golf courses, and some trees and landscape features.

In addition, FEMA makes public assistance grants to cover a portion of the cost of administering grants for the above purposes. The amounts of grants for administrative expenses are determined by a formula that takes into account the total amount of public assistance grants provided to grantees following the disaster.

Public Assistance Costs Have Increased in Recent Years

As shown in table 1.1, the amounts that FEMA has obligated for public assistance have increased substantially for the disasters and emergencies declared in recent years, exceeding \$2 billion for fiscal year 1994 alone.⁴ In constant 1995 dollars, FEMA obligated over \$6.5 billion in public assistance for 246 disasters and emergencies declared during fiscal years 1989 through 1994, as compared with about \$1 billion for 151 disasters and emergencies declared during the preceding 6 fiscal years.⁵

³Federal-aid highways and roads are the more important state, county, and city roads; they constitute about 25 percent of all public road mileage.

⁴Table 1.1 reflects FEMA's obligations through August 1995 for the disasters declared in fiscal years 1989 through 1994. The actual costs of the disasters for these fiscal years will likely be higher as additional projects are approved or completed. The data for fiscal years 1983 to 1988 are current as of August 1994; according to FEMA, the data are unlikely to change for these years.

⁵FEMA's total disaster assistance obligations during fiscal years 1989 through 1994, including assistance for individuals, was about \$12.4 billion in constant 1995 dollars.

Table 1.1: FEMA's Obligations for Public Assistance, Major Disasters and Emergencies Declared in Fiscal Years 1983-1994

In millions of constant 1995 dollars

Fiscal year	Number of disasters and emergencies	Amount
1994	37	\$2,153.8
1993	58	1,073.7
1992	48	1,394.5
1991	39	301.8
1990	35	927.6
1989	29	686.4
Total, 1989-94	246	\$6,537.8
1988	17	72.4
1987	25	102.1
1986	30	360.3
1985	19	63.9
1984	40	142.6
1983	20	310.2
Total, 1983-88	151	\$1,051.5

Note: The obligations for the disasters declared in each fiscal year were converted to constant dollars using the Gross Domestic Product implicit price deflator series published by the Department of Commerce. Because obligations for a disaster may be made during the year(s) following the fiscal year in which the disaster was declared, the conversion may somewhat overstate the obligations for earlier disasters.

Source: GAO's analysis of FEMA's data.

FEMA could not readily provide data showing the amounts obligated for the permanent restoration of each category of facilities; however, FEMA provided data showing the projected cost for each category. The projected costs are FEMA's best estimates of what the total obligations will be when all activities associated with the disaster are completed. As shown in table 1.2, for disasters that occurred during fiscal years 1989 through 1994, the public assistance category with the highest projected cost was the permanent restoration of public buildings and equipment—over \$2.6 billion, or about one-third of the total projected public assistance costs for these disasters.

Table 1.2: Projected Public Assistance Costs for Disasters in Fiscal Years 1989-1994

In millions of 1995 dollars

Public assistance category	Amount
Permanent restoration of public buildings and equipment	\$2,641.6
Emergency protective measures	1,769.6
Debris removal	1,322.6
Permanent restoration of public utilities	1,178.2
Permanent restoration of roads and bridges	571.5
Permanent restoration of parks, recreational, and other facilities	564.6
Permanent restoration of water control facilities	259.7
Grant administration	175.3
Total	\$8,483.1

Source: GAO's analysis of FEMA's data.

Other Public Assistance-Related Costs

To help verify the scope of work needed for individual public assistance projects and the estimated costs, FEMA contracts with technical specialists such as architect/engineering firms. For disasters declared during fiscal years 1989 through 1994, FEMA has obligated about \$71.4 million for this purpose.⁶

Under section 404 of the Stafford Act, FEMA may provide additional grants to mitigate the damage from future disasters, for example, to strengthen or retrofit undamaged public facilities in the disaster area. These grants can cover up to 75 percent of the cost of the mitigation effort. For the disasters declared during fiscal years 1989 through 1994, FEMA has obligated about \$275.3 million for this purpose.

Also, when a disaster is declared, FEMA may make "mission assignments" directing other federal agencies to perform work. Mission assignments may be made for a number of purposes, including those related to restoring public services or facilities; for example, FEMA may assign the U.S. Army Corps of Engineers the mission of debris removal in a disaster area. According to FEMA, mission assignments are primarily for public assistance work. For disasters declared in fiscal years 1989 through 1994, FEMA obligated about \$1.07 billion for mission assignments. According to a 1995 Senate report, for fiscal years 1990 through 1993 FEMA obligated

⁶Unless stated otherwise, dollar figures in this chapter are expressed in constant 1995 dollars.

nearly two-thirds of all mission assignment dollars to the Corps of Engineers.⁷

Eligibility for Public Assistance Has Expanded

A number of factors may help explain the trend toward increasing costs, including an increase in the number of declared disasters and emergencies and the incidence of unusually large disasters. The period encompassing fiscal years 1989 through 1994 included some very destructive and costly disasters, including hurricanes Andrew and Iniki in 1992, the Midwest floods of 1993, and the Northridge (California) earthquake in 1994. FEMA estimates that the total public assistance costs of the Northridge earthquake alone will exceed \$3.4 billion.

Additionally, more facilities have gradually become eligible for public assistance. The Stafford Act is an expansion of the first permanent authority (P.L. 81-875) enacted in 1950 to provide disaster assistance on a continuing basis without the need for congressional action.⁸ Over the years, the Congress has generally increased eligibility for public assistance through legislation that expanded the categories of assistance and/or specified persons or organizations eligible to receive assistance. In some cases, legislation also imposed requirements as a condition of eligibility. (App. I provides a chronology of major legislative changes affecting public assistance eligibility.)

Also, FEMA has made regulatory changes that may have expanded the federal cost of the public assistance program, according to a July 1995 report by FEMA's Inspector General.⁹ These included changes in (1) the building codes applicable to the repair and restoration of damaged buildings and (2) the damage threshold governing the decision on whether to repair or replace a damaged facility.

Other Federal Agencies Help Repair Public Facilities

Under authorities other than the Stafford Act, federal agencies provide financial assistance for the permanent repair or restoration of certain public facilities—an important factor in determining the eligibility of some of FEMA's public assistance. The Federal Highway Administration's (FHWA) emergency relief program funds 80 percent of the costs of permanently

⁷Federal Disaster Assistance, Report of the Senate Task Force on Funding Disaster Relief (Senate Document No. 104-4, Mar. 15, 1995).

⁸In 1988, P.L. 100-707 amended existing disaster relief legislation and renamed it as the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).

⁹Options for Reducing Public Assistance Program Costs (Inspection Report I-02-95, July 1995).

restoring federal-aid roads or highways (90 percent for Interstate highways) that have been seriously damaged by natural disasters. By law, FHWA can provide up to \$100 million in emergency relief funding to a state for each natural disaster or catastrophic failure (such as a bridge collapse) that is found eligible; however, the Congress has passed special legislation lifting the cap for specific disasters. In fiscal years 1989 through 1994, FHWA obligated over \$2.5 billion for its emergency relief program.

The Department of Agriculture's (USDA) Emergency Watershed Protection program funds, among other things, a portion of the costs of repairing certain nonfederal levees and other water control works damaged by flooding. The program is applicable to small-scale, localized disasters as well as those of national magnitude. For fiscal years 1989 through 1994, USDA received about \$494 million in appropriations for this program. Also, the U.S. Army Corps of Engineers funds 80 percent of the costs to repair qualifying flood-damaged nonfederal levees. To qualify for the Corps' funding, levees must be publicly sponsored by entities such as levee districts and municipalities. The Corps obligated about \$54.5 million for the program during fiscal years 1989 through 1994.

The Department of Housing and Urban Development (HUD) provides financial assistance to public housing authorities for the modernization (physical improvement) of public housing. Distributed by formulas, the funds may be used to meet modernization needs resulting from natural and other disasters and from emergencies. In addition, HUD administers a \$75 million reserve fund (established in 1992) specifically for disaster- and emergency-related modernization needs. HUD could not readily provide the amount of formula funds used for repairing disaster-damaged public housing; about \$62 million from the emergency reserve fund was allocated during fiscal years 1993 through 1994.

Also, funds provided under HUD's Community Development Block Grant (CDBG) program may be used for disaster recovery. CDBG funds may be used for some purposes similar to those for which FEMA's public assistance funds are used, including clearing debris, providing extra security, reconstructing essential utility facilities, and, in some cases, repairing or reconstructing government buildings. HUD officials could not provide accurate data on the amount of CDBG funds used for disaster assistance.¹⁰ Program appropriations for fiscal years 1989 to 1994 ranged from about \$3.1 billion to about \$4.4 billion.

¹⁰According to an official in HUD's Office of Block Grant Assistance, grantees are required to report on their use of CDBG funds for disaster assistance; however, a backlog exists on recording the information.

Objectives, Scope, and Methodology

The Chairman, Subcommittee on VA, HUD and Independent Agencies, Senate Committee on Appropriations, asked GAO to

- review FEMA's criteria for determining eligibility for public assistance,
- determine how FEMA ensures that public assistance funds are expended only for eligible items, and
- identify changes in eligibility that could lower the costs of federal public assistance in the future.

To review FEMA's criteria for determining eligibility, we reviewed the Stafford Act and related regulations, FEMA's public assistance manual and policy memorandums, and other relevant documents. We interviewed public assistance officials at FEMA's Washington, D.C., headquarters, including the Engineering Branch Chief, Infrastructure Support Division. We also interviewed officials at FEMA's regional office in San Francisco and its disaster field office in Pasadena, California. We selected these field locations because of their responsibility for administering the public assistance program for the Northridge earthquake and other significant disasters. At the field locations, we documented the steps involved in approving projects and reviewed files pertaining to specific public assistance projects. We also interviewed officials of FEMA's Office of Inspector General (OIG) and reviewed OIG reports pertaining to public assistance generally and to specific disasters. In addition, we incorporated information obtained in telephone interviews with public assistance officials in each of FEMA's 10 regions (see below).

To determine how FEMA ensures that funds are expended only for eligible items, we reviewed FEMA's written guidance and procedures for disbursing funds to public assistance grantees. At FEMA's headquarters, the California locations, and FEMA's regional office in Atlanta, Georgia, we interviewed financial officials, including FEMA's Deputy Chief Financial Officer; public assistance personnel of the Response and Recovery Directorate; and state personnel. We also examined the relevant financial standards and requirements posed by the Office of Management and Budget. Because FEMA's process involves audits, we interviewed OIG officials, including the Deputy Inspector General, and obtained OIG and contractors' audit reports of public assistance projects. We also obtained from the OIG information about the extent of its audit coverage. We also interviewed and obtained documents from the Price-Waterhouse auditors contracted by FEMA.

To identify the changes in eligibility criteria that could potentially reduce the costs of public assistance in the future, we examined published

literature and reports, including reports by FEMA's Inspector General. We also surveyed public assistance officials in each of FEMA's 10 regional offices to obtain their ideas for reducing the future costs of public assistance, including the rationale for each proposal and the likely impacts. (Because of limitations on the availability of FEMA's financial data, we were generally unable to estimate the potential impacts on public assistance expenditures.) We specifically surveyed these officials because they work closely with the program on a day-to-day basis and are knowledgeable about the application of FEMA's public assistance criteria. To balance their perspectives, we also asked the National Emergency Management Association—an organization of state emergency management officials—and the Association of State Floodplain Managers to comment on the proposals cited by the FEMA regional officials. (A list of the proposals not discussed elsewhere in this report and additional details on our methodology are contained in app. II.)

FEMA provided historical data on its financial obligations and cost projections. We did not independently verify the accuracy of this information. In March 1995, we testified that because FEMA's Disaster Relief Fund (which accounts for the majority of the agency's funds) has not been subject to audit, there is no assurance that the fund's financial data are accurate.¹¹ In July 1995, FEMA's Inspector General reported that FEMA's accounting system lacks the internal controls and discipline necessary to ensure the integrity of financial data.¹²

We provided a draft of this report to FEMA for its review and comment. FEMA provided comments in a letter from the Director; this letter and our response are in appendix III. We modified the report where appropriate in response to the comments. Our review was conducted from August 1995 through March 1996 in accordance with generally accepted government audit standards.

¹¹Disaster Assistance: Information on Expenditures and Proposals to Improve Effectiveness and Reduce Future Costs (GAO/T-RCED-95-140, Mar. 16, 1995).

¹²Audit of FEMA's Disaster Relief Fund (Audit Report H-16-95, July 1995).

Clearer Eligibility Criteria Could Improve Accuracy and Consistency of Determinations

The Stafford Act provides a general framework for federal assistance programs for public losses sustained in disasters. Within that framework, FEMA provides the basic criteria for determining the work that is eligible for public assistance funding. While applying the criteria may inevitably entail subjectivity, we found ambiguities in the criteria that created difficulties in determining (1) the extent to which the permanent restoration of disaster-damaged facilities is eligible for funding and (2) the eligibility of the facilities of private nonprofit applicants. We also found that until recently, FEMA had not systematically updated or disseminated policy changes to the regional officials involved in making eligibility determinations.

The decisions on eligibility effectively determine the level of federal spending for public assistance, affecting the amounts of grants and of FEMA's and applicants' administrative costs. Additionally, without clear, up-to-date criteria, inconsistent or inequitable eligibility determinations and time-consuming appeals by grantees and subgrantees may be more likely to occur. The importance of clear criteria is heightened because in large disasters FEMA often uses temporary personnel with limited training to help prepare and process applications. FEMA and other officials have recognized a general need for clearer criteria and improved policy dissemination to help determine eligibility for public assistance.

Criteria for Standards Applicable to Permanent Restoration Are Not Specific

For disasters declared in fiscal years 1989 through 1994, FEMA projects that public assistance grants for permanent repairs and restorations will total over \$5.2 billion (in 1995 dollars). The decisions made on the eligibility of work on facilities are based on the general criteria for determining federal public assistance and on the criteria specific to such facilities. In order to apply these criteria, FEMA officials may have to make subjective judgments because the criteria lack specificity and/or concrete examples.

General Criteria Are Used to Screen Potential Projects

FEMA requires that potential applicants prepare a list of all damaged sites and equipment or inventory lost, provide photos or site sketches, and provide information on insurance coverage and applicable codes and standards. A survey team—consisting of FEMA, other federal, state, and/or local officials—inspects each damage site and reviews the applicable records to determine the extent of the disaster damage, the scope of the eligible work, and the estimated cost of that work. This information is recorded on a damage survey report (DSR). DSRs are reviewed by FEMA officials located at the relevant regional offices or, in the case of larger disasters, at disaster field offices near the disaster areas. The reports are

reviewed to verify the scope of work, cost calculations, adequacy of documentation, eligibility, and compliance with special requirements, such as those for floodplain management and hazard mitigation. (For facilities that are approved, the DSR serves as the basis for obligating FEMA funds.)

Once it is determined that an applicant is eligible for federal public assistance, the next step is to identify what work is eligible for such assistance. There are three general criteria that apply to all types of work for all applicants:

- The work must be required as a direct result of the declared disaster. Primarily, damages that occur during the “incident period,”¹ or are the direct result of events that occurred during the incident period, are considered for eligibility. Also potentially eligible are (1) protective measures and other preparation activities performed within a reasonable time in advance of the event and (2) damages that occur after the close of the period that can be tied directly to the declared event. For example, a landslide caused by heavy rains may not occur for some time after the rains have stopped.
- The damages must have occurred and the work or activity must be performed within the designated disaster area. A presidential disaster declaration authorizes federal assistance in the affected state; FEMA determines which counties within the state will receive assistance and the type(s) of assistance. Other political subdivisions, such as a city or special district, may be designated, but the county is the most common unit of designation.
- The work or expense must be the legal responsibility of the applicant. Generally, ownership of a facility is sufficient to establish responsibility for repairs to the facility.

FEMA Has Encountered Problems in Determining Standards Applicable to Permanent Restoration of Facilities

According to FEMA regional officials, applying the criteria for public assistance can be difficult. Among the more problematic issues is determining the standards (building codes) that are applicable to repair/restoration work, which in turn affect decisions on whether facilities should be repaired or replaced.

Generally, FEMA’s criteria define eligible work as that needed to restore the facility on the basis of the design of the facility as it existed immediately before the disaster and in accordance with certain other conditions; in

¹The period of time during which the disaster event occurred, as established by FEMA in consultation with a state representative.

some instances, grant funds may be used to replace a facility entirely or for an alternative facility. One condition is that permanent restoration work must comply with the applicable standards. Such standards must

- apply to the type of repair or restoration being performed (for example, there may be different standards for repair and for new construction);
- be appropriate to the pre-disaster use of the facility;
- be in writing and formally adopted by the applicant before the project is approved;
- apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility; and
- if in effect at the time of the disaster, have been enforced during the time they were in effect.

Furthermore, to be considered “applicable,” the standards must be in a formally adopted written ordinance of the jurisdiction in which the facility is located, or be a state or federal requirement. The standards do not necessarily have to be in effect at the time of the disaster; if the applicant adopts new standards before FEMA has approved the damage survey report for the permanent restoration of a facility in the jurisdiction, the work done to meet these standards may be eligible for public assistance. As discussed in chapter 4, FEMA regional officials cited a need to better define the authority with the ability to adopt and approve standards. They suggested that clarifying the language in the regulations to define who has the authority to adopt and approve standards might reduce the costs and the confusion that surrounds this issue.

Also, to be applicable to the eligible facility, FEMA requires that the standards must be applied to all similar types of facilities. However, there are no criteria that (1) specify a time period during which the newly adopted standards must be in place after the eligible facility is funded or (2) define “similar” facilities.

According to a public assistance official at FEMA headquarters, FEMA can determine whether or not post-disaster standards proposed for the restoration of a facility are “reasonable” before making a funding decision. However, he said that there are no written criteria to determine reasonableness. He added that FEMA assumed that public scrutiny during the adoption process would discourage unreasonable standards, because the standards have to be applicable to all similar facilities whether owned by the public or private sector. However, this approach is not without problems. For example, the official noted that a standard adopted for

hospitals after the Northridge earthquake, although not necessarily unreasonable, provided for extensive upgrading for relatively little damage, and there was not the self-policing effect that FEMA had expected.

FEMA inspectors involved in assessing the damages following the Northridge earthquake said that determining the applicability of standards appears especially problematic in the case of earthquakes. FEMA and its applicants have had significant disagreements about the applicability of standards to eligible facilities following both the Loma Prieta and Northridge earthquakes. A source of contention between FEMA and some applicants surrounds the applicability of triggers—integral parts of the building codes signaling the point at which various upgrades, or the replacement of an entire facility, must be undertaken. Further complicating this problem is the fact that in the case of earthquakes, some structural damage may not be apparent upon first inspection.

Determining what standards are applicable to permanent restoration affects whether or not facilities will be replaced entirely. FEMA provides that if repairing a facility (in accordance with standards applicable to repairs) would cost 50 percent or more of the cost of replacing the facility to its pre-disaster design (in accordance with the standards applicable to new construction), then the facility is eligible for replacement in accordance with the new construction standards.

Criteria for Determining Eligibility of Certain Private Nonprofit Applicants Are Unclear

Before 1970, private nonprofits were not eligible for public assistance. As detailed in appendix I, the Congress enacted legislation over the next few years that expanded the number and types of private nonprofit organizations eligible for assistance. Public assistance for private nonprofits has averaged about \$60 million annually during the 1990s. In addition to making specific facilities, such as schools and hospitals, eligible, Public Law 100-707 (enacted in 1988) established a category of “other” eligible private nonprofit organizations, defined as “other private nonprofit facilities which provide essential services of a governmental nature to the general public” (42 U.S.C. 5122).

When developing regulations to implement the legislation, FEMA relied on an accompanying report² to define the “other” category. The report’s examples included museums, zoos, community centers, libraries, shelters for the homeless, senior citizens’ centers, rehabilitation facilities, and shelter workshops. FEMA’s regulations incorporated the list of examples

²House Report No. 100-517.

from the House report but recognized that other, similar facilities could be included.

FEMA experienced problems in applying this regulation because, among other things, the wide range of services provided by state and local governments made it difficult to determine whether the services of a private nonprofit facility were of a governmental nature. In 1993, FEMA amended its regulations to limit eligible “other” private nonprofit facilities to those specifically included in the House report and those facilities whose primary purpose is the provision of health and safety services.

It can be difficult to determine the eligibility of these other private nonprofit facilities. The Federal Coordinating Officer (the person in charge of FEMA’s recovery efforts) for the Northridge earthquake said that clearer eligibility criteria are needed to determine whether private nonprofit facilities may qualify as “community centers.” Specifically, there has been much debate over the extent to which a facility must be open to the public in order to be eligible. In the past, FEMA gave many facilities the benefit of the doubt and funded them, even though it appeared that these facilities were not really open to the public.

FEMA’s Inspector General has cited examples of private nonprofits that do not appear to provide essential government services, yet received FEMA public assistance.³ In a July 1995 report,⁴ the Inspector General pointed out three private nonprofits that the agency found eligible following the January 1994 Northridge earthquake and concluded that they did not appear to provide essential government services:

- A contemporary dance foundation received public assistance to repair damage to its building caused by the earthquake because it provided a dance program for underprivileged children. As of the beginning of April 1996, FEMA had obligated about \$120,000 in public assistance funds to the foundation.
- A small performing arts theater received public assistance for earthquake damages because it offered discount tickets to senior citizens and provided acting workshops for youth and seniors. As of the beginning of April 1996, FEMA had obligated about \$1.5 million in public assistance to the theater.

³The Inspector General determined that since the 1988 legislation, about \$48 million has been granted to community centers, day-care facilities, recreational facilities, and senior citizens’ centers.

⁴Options for Reducing Public Assistance Program Costs (Inspection Report I-02-95, July 1995).

- An institute, used primarily as retreat center for youth of a particular religion, but also open to other youth and senior citizens' groups of other religions, received public assistance for earthquake damage. As of the beginning of April 1996, FEMA had obligated about \$4.8 million in public assistance funds to the institute.

To supplement its regulations and to help public assistance personnel interpret them, FEMA developed a manual entitled "Public Assistance: Guide for Applicants." The manual (hereafter referred to as the public assistance manual), published as a draft in September 1992, has not been revised and is thus not entirely consistent with the 1993 regulation's definition of "other" private nonprofit facilities. Furthermore, the manual does not define "essential services" or "governmental nature," nor does it make clear the extent to which the facilities must be used to provide services to the general public in order to be eligible.

At least partly in response to its experience following the Northridge earthquake, FEMA has revised the definition of community center so that the primary purpose of a facility must be "community oriented." A FEMA headquarters official told us, in early April 1996, that the agency is again developing a definition for community centers, but because of problems in developing the definition, it may be some time before the definition is ready to be issued.

Clearer Criteria Are Important for Controlling Costs and Other Reasons

Eligibility decisions effectively determine the level of federal spending for public assistance, affecting the amounts of grants and of FEMA's and applicants' administrative costs. Without clear criteria, inconsistent or inequitable eligibility determinations and time-consuming appeals by grantees and subgrantees may be more likely to occur. The importance of clear criteria is heightened because in large disasters FEMA often uses temporary personnel with limited training to help prepare and process applications.

Eligibility Determinations Affect Public Assistance Costs

Eligibility decisions effectively determine the level of federal spending for public assistance. Determining whether a facility is eligible, and the appropriate scope of work, can affect the expenditure of millions of federal dollars.

For example, determining which standards are applicable to earthquake-damaged facilities found eligible for assistance may have

enormous federal cost implications. Originally, FEMA determined that one hospital damaged in the Northridge earthquake was eligible for \$3.9 million for repairs and an additional \$2.9 million for cost-effective seismic upgrading. California, as the grantee, argued that the hospital was eligible for \$64 million because an alternate set of standards was applicable. (Ultimately, as described in ch. 4, FEMA and the state reached an agreement whereby FEMA will provide \$29 million.) The Inspector General noted that the total costs of some Northridge projects far exceeded the actual repair costs because of the upgrades and other items “triggered” by the standards found to be applicable.

Furthermore, to the extent that the lack of clear criteria contributes to the number of appeals, FEMA’s administrative costs are increased. Any decision on eligibility for assistance may be appealed by a potential recipient. If necessary, the applicant can formally appeal to three levels: the FEMA Regional Director, the Associate Director of the Response and Recovery Directorate, and the Director of FEMA. Each appeal is processed through the state for review and comment before being forwarded to FEMA. The Inspector General’s report pointed out that it is not unusual for the appeals process to take more than 2 years to complete and concluded that the federal government could save considerable staff time and money if the appeals process were shortened.

According to FEMA officials, between fiscal year 1990 and the end of fiscal year 1995, there were 882 first-level appeals of public assistance eligibility determinations. FEMA headquarters had begun logging in second- and third-level appeals in January 1993 and could not quantify the number of such appeals before then. Between January 1993 and the end of March 1996, there have been 104 second-level appeals and 30 third-level appeals. Although FEMA may always expect some appeals, clearer guidance on applying eligibility criteria could help reduce their number.

In the case of the Northridge earthquake recovery effort, disagreements over applicable standards have caused additional expenses for both FEMA and some applicants. For example:

- FEMA has funded applicants’ costs for architectural and engineering evaluations to help ascertain the degree of structural damage. In cases in which FEMA officials disagreed with the evaluations, FEMA has incurred additional expense by conducting its own architect and engineering studies.

- Applicants have pointed out that they have found an increasing need to hire contractors who specialize in interpreting the FEMA public assistance program. A lack of clarity in the eligibility criteria was cited as the reason for disagreements still outstanding between FEMA and the state of California nearly 6 years after the Loma Prieta earthquake.

Finally, in part because of the large dollar implications, the lack of clarity in FEMA's criteria may encourage potential applicants to make the most of opportunities for assistance. In our 1992 report on the recovery from the Loma Prieta earthquake, we discussed a lack of criteria on hazard mitigation, historic buildings, and private nonprofit applicants.⁵ At the time, FEMA regional officials told us that, lacking specific guidelines to implement the criteria, they sought to "moderate the drain on federal disaster funds, while local applicants sought to maximize assistance." Similarly, in the course of preparing our June 1994 report on the potential impediments to rebuilding after the Northridge earthquake, federal officials said that state and local governments often try to maximize federal contributions.⁶

Ambiguities in the existing criteria for public assistance echo a lack of clear criteria for determining that disaster damage warrants federal assistance—i.e., a presidential disaster declaration—which we have reported on previously.⁷ As a prerequisite to federal disaster assistance under the Stafford Act, a governor must take "appropriate response actions" and provide information on the nature and amount of state and local resources committed to alleviating the results of the disaster; the President then decides whether federal assistance is needed to supplement state and local resources. However, the act does not identify the criteria for evaluating governors' requests. FEMA's Inspector General reported in 1994 that (1) neither a governor's findings nor FEMA's analysis of capability is supported by standard factual data or related to published criteria and (2) FEMA's process does not always ensure equity in disaster decisions because the agency does not always review requests for declarations in the context of previous declarations. We previously reported that disclosing the process for evaluating requests would help

⁵Earthquake Recovery: Staffing and Other Improvements Made Following Loma Prieta Earthquake (GAO/RCED-92-141, July 30, 1992).

⁶Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding (GAO/RCED-94-193, June 17, 1994).

⁷See Disaster Assistance: Information on Declarations for Urban and Rural Areas (GAO/RCED-95-242, Sept. 14, 1995).

state and local governments determine the circumstances that warrant federal assistance.⁸

Temporary Personnel With Limited Training May Be Used to Help Prepare Survey Reports

The need for clearer, more definitive FEMA criteria dealing with eligibility for public assistance takes on added importance because of FEMA's use of temporary personnel with limited training to help prepare and process DSRs, which are used in determining the scope of work eligible for funding. The Federal Coordinating Officer for the Northridge earthquake told us that better criteria and guidelines ultimately result in better DSRs. (As discussed in ch. 3, FEMA has limited control over funds following DSR approval; consequently, criteria and/or training that would help improve DSR preparation may help ensure that funds are used only for eligible items.)

The number of large disasters during the 1990s has resulted in a great number of DSRs. For example, after the Northridge earthquake, over 17,000 DSRs were prepared; after the 1993 Midwest floods, over 48,000 DSRs were prepared in nine states. The combination of inexperienced personnel forced to do staggering amounts of work in a limited amount of time highlights the need for clear and comprehensive criteria.

FEMA regional officials working on the recovery from the Northridge earthquake pointed out a need to develop training for FEMA inspectors. They said that the lack of training directly results in poor quality DSRs that may cause overpayments or underpayments to public assistance recipients. They added that increased training is also needed to ensure the standardization of eligibility determinations across the country. The lack of standardization could cause inconsistent determinations because, in large disasters such as Northridge, FEMA may send in staff from different regions of the country.

Our July 1992 report on the recovery from the Loma Prieta earthquake pointed out that FEMA's customary reliance on emergency reserve staff, who usually stayed only a few months, led to discontinuity and inefficiency. The applicants complained that each time a new FEMA representative took over a case, that person had to duplicate the agency's previous efforts to examine the damage, review the documentation, and learn the complexities. Similarly, a FEMA summary of disaster response and recovery operations after flooding in Kansas in the summer of 1993 pointed out that attempts to expedite public assistance inspections met

⁸Requests For Federal Disaster Assistance Need Better Evaluation (GAO/CED-82-4, Dec. 7, 1981).

with immediate roadblocks because, in part, FEMA's pool of available inspectors was quickly exhausted and because the training of inexperienced inspectors consumed numerous staff days that could have been used more productively to prepare damage surveys.

FEMA officials told us that early on in a disaster, a number of people with very different levels of experience are involved in the damage survey process. FEMA and California officials told us that training is often not adequate, resulting in DSRs that are deficient and that hinder FEMA officials in making determinations about project eligibility. Officials involved in inspecting the damage sites from the Northridge earthquake said that early in the recovery effort, they made incorrect decisions on eligibility. One inspector told us that some damage survey reports prepared soon after the earthquake included work that had been specifically ruled ineligible after the Loma Prieta earthquake 5 years earlier.

Criteria Have Not Been Systematically Updated and Disseminated

For determining eligibility for public assistance, FEMA's written guidance supplementing the regulations are the draft public assistance manual and policy memorandums. A FEMA task force developed the regulations following the Stafford Act. According to a FEMA regional official who was a member of the task force, the regulations were intended to be supplemented with guidance, examples, and training to clarify the eligibility criteria and help ensure their consistent application; however, this supplementation has not occurred as envisioned. According to a FEMA headquarters official, the agency has not been able to complete the public assistance manual since 1992 because of the significant workload caused by the large number of disasters.

A FEMA contractor responsible for reviewing DSRs noted that various decisions made in determining eligibility following a disaster have not been systematically codified or otherwise made easily available to FEMA personnel to serve as a precedent. FEMA inspectors told us that there have been a number of policy changes throughout the course of the recovery from the Northridge earthquake, but there is no one central source where the changes are recorded. They added that some agreements, made by personnel who have since rotated, were never put into writing. Also, the Federal Coordinating Officer for Northridge told us that some policy decisions have been informal and unwritten.

Officials Recognize Need to Clarify Criteria and Improve Policy Dissemination

FEMA, state, and local officials have generally identified the need for (1) clearer criteria to help determine eligibility for public assistance and (2) better training for inspectors. The Inspector General's July 1995 report pointed out that there is a demand for increasingly specific criteria because significant and numerous changes in eligibility in the public assistance program over the past 25 years have created substantial, time-consuming, and expensive disagreements with applicants. The Inspector General found that virtually every applicant interviewed complained that the federal criteria governing the program were not sufficiently specific; as a result, the applicants contended that neither they nor FEMA staff can easily and consistently determine eligibility and appropriate costs. FEMA officials told us that a major problem in the Northridge earthquake recovery effort has been the difficulty of determining what is eligible for FEMA funding.

At a January 1996 hearing,⁹ the Director of FEMA said that in previous disasters, FEMA staff worked without having policies in place that addressed public assistance. He added that determining what is and is not eligible for assistance has been difficult. He said that FEMA is developing criteria to address these areas. A FEMA headquarters official added that FEMA plans on completing the public assistance manual before the end of fiscal year 1996. The eligibility criteria will not differ significantly from those in the draft manual; however, according to the official, FEMA plans to begin updating and supplementing the manual immediately after it is issued.

The Northridge Federal Coordinating Officer noted that FEMA has recently taken steps to improve policy dissemination. He offered as examples (1) a compendium of policy material compiled by one FEMA regional office, which FEMA headquarters is circulating to the other regions; (2) the development of a new system of disseminating policy memorandums, including a standardized format and numbering system; and (3) the dissemination by headquarters of the results of second- and third-level appeals to all regional offices.

FEMA has also identified a need to better train inspectors. In March 1996, a training division official at FEMA headquarters said that the agency held the first session of a new training course in February 1996. For the remainder of fiscal year 1996 and fiscal year 1997, the division projects an additional 13 courses. However, the official added that currently a major restriction

⁹Hearing before the Subcommittee on Government Management, Information, and Oversight, House Committee on Government Reform and Oversight, Northridge, California, January 19, 1996.

in reaching these projections is a lack of qualified instructors. The targeted audiences are full-time FEMA staff and disaster assistance reservists, as well as employees of other federal agencies, such as the Corps of Engineers, that assist FEMA on an as-needed basis to inspect damage. The bulk of the course is devoted to the subjects of eligibility for the public assistance program and DSR operations.

Conclusions

Clearer and more comprehensive criteria, supplemented with specific examples and systematically disseminated, could help ensure that eligibility determinations are consistent and equitable and could help control the costs of future public assistance. To the extent that the criteria are more restrictive, the costs of public assistance in the future could be less than they would otherwise be. In the 1990s, the potential adverse effects of a lack of clear criteria have become more significant because of (1) an increase in large, severe disasters and (2) the need to use temporary employees with limited training in the process of inspecting damage and preparing damage survey reports.

Recommendation

We recommend that the Director of FEMA issue criteria that more clearly and comprehensively identify what facilities and work are eligible for public assistance and develop a system for disseminating these and future changes in criteria to FEMA regional staff. The Director should specifically clarify the criteria for determining the extent to which the permanent restoration of disaster-damaged facilities is eligible for funding and the eligibility of private nonprofit facilities.

Financial Oversight of Approved Public Assistance Projects Is a State Responsibility

In accordance with a governmentwide effort to simplify federal grant administration, FEMA relies on the states—in their role as grantees—to ensure that expenditures are limited to eligible items. The states certify to FEMA at the completion of each subgrantee’s project and the closeout of each disaster that all disbursements of public assistance grants have been in accordance with approved DSRs. Additional controls over disbursements include audits of subgrantees by (1) independent auditors pursuant to the Single Audit Act of 1984 and (2) FEMA’s Office of Inspector General (OIG), with possible augmentation by state audit agencies.

Audits by the Inspector General have identified disbursements for ineligible items—that is, for items not authorized by approved DSRs. We believe that the Inspector General’s findings, in light of FEMA’s reliance on the states for financial controls after DSRs are approved, reinforce the need for clearer criteria to guide the process of determining eligibility for public assistance funds.

FEMA Relies on States to Ensure That Expenditures Are Limited to Eligible Items

In October 1988, as part of a governmentwide effort to standardize federal grant administration, FEMA implemented the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” For the public assistance program, the states became FEMA’s only grantees, and all other recipients—including state agencies, local governments, and eligible private nonprofits—became subgrantees of the states. (Previously, all public assistance recipients had dealt directly with FEMA.) Under the uniform requirements, it is the states’ responsibility, rather than FEMA’s, to ensure that all costs applied against FEMA funding are eligible.

States Are Responsible for Disbursements

The states, as grantees, must comply with the applicable regulations and FEMA’s guidance to ensure that federal funds are properly used and accounted for. Among other things, the uniform requirements provide that the states must (1) develop a plan to administer the program, (2) establish appropriate budget and accounting records and procedures, and (3) comply with the applicable circulars from the Office of Management and Budget (OMB). For example, Circulars A-87 and A-122 set forth cost principles for state and local governments and nonprofit organizations, and Circular A-110 has special rules for grants to hospitals, educational institutions, and nonprofit organizations.

When FEMA approves a DSR, it obligates an amount equal to the estimated federal share of the project's cost. The obligation makes these funds available to the state to draw upon as needed by the subgrantees. (For "small" projects—those with an estimated cost of less than \$46,800—the entire amount may be provided by the state to the subgrantee immediately.) Generally, subgrantees request disbursements when bills for projects are due. If a subgrantee wishes to modify a project after a DSR is approved or experiences cost overruns, it must apply through the state to FEMA for an amended or new DSR. This procedure gives FEMA the opportunity to review the supporting documentation justifying the modification and/or cost overrun.

FEMA Requires State Certification at Project Completion or Disaster Closeout

FEMA's regulations state that after all recovery activities for a particular disaster have been completed, the disaster is ready for closeout. (Before closeout, the disaster is considered to be "open.") One aspect of the closeout is the state's certification that all disbursements have been proper and eligible under the approved DSRs.

FEMA does not specify what actions the state should take to enable it to make the certification. The agency's public assistance manual states that inspections and audits can be used, and that the state plan should include procedures for complying with the administrative aspects of 44 C.F.R. parts 13 (grants management) and 206 (public assistance). The manual also notes that FEMA has no reporting requirements for the subgrantees but expects the grantees to impose reporting requirements on the subgrantees so that the grantees can submit the necessary reports.

Most disasters stay open for several years before reaching the closeout stage. FEMA officials involved in the closeout process in the San Francisco, Atlanta, and Boston regions said that they review the states' closeout paperwork to verify the accuracy of the reported costs, but they rely on the states to ensure the eligibility of costs. In commenting on a draft of this report, the Director of FEMA stated that FEMA conducts final inspections and project reviews to verify the actual eligible costs for large projects "in which the grantee is required to make an accounting to FEMA of eligible costs."

FEMA public assistance program officials generally believe that the states' reviews are adequate to ensure that disbursements are made only for eligible items; conversely, FEMA's Deputy Inspector General advised us that the quality of the states' closeout reviews varies considerably from state to

state and that he does not rely on the closeout reviews as adequate assurance that all costs charged against the DSR were proper, especially when many states' disaster recovery personnel view themselves as advocates for the subgrantees.

Audits May Serve as Check on Disbursements for Ineligible Items

In addition to certifications by the states, independent audits can serve as a further check on the eligibility of items funded by public assistance grants. Audits of public assistance funds can be done by independent auditors in compliance with the Single Audit Act of 1984, by the FEMA OIG, and/or by the states' audit organizations. However, the coverage of individual projects appears to be limited.

Single Audit Process May Provide Additional Assurances

FEMA may obtain additional assurances about the use of its funds from the audits of subgrantees conducted as part of the single audit process.¹ State and local governments and nonprofit organizations that receive federal funds of \$100,000 or more in a year must have a single audit² that includes an audit of the entity's financial statements and additional testing of the entity's federal programs. The auditors conducting the single audits must test the internal controls and compliance with the laws and regulations for the programs that meet specified dollar criteria. Those criteria result in the largest programs, in terms of expenditures, being tested. The entities that receive \$25,000 to \$100,000 in federal assistance in a year have the option of having a single audit or an audit in accordance with the requirements of each program that the entity administers. The entities that receive federal assistance of less than \$25,000 in a year are exempt from federally mandated audits.

To the extent that subgrantees meet the audit criteria and FEMA's programs meet the testing criteria, FEMA can obtain assurances about the use of its funds. However, in the absence of such audit coverage, FEMA must rely on the grant recipients to exercise effective monitoring activities or conduct its own monitoring efforts.

For the 4-year period ending September 30, 1995, FEMA's OIG received 219 Single Audit Act and OMB Circular A-133 audit reports, 17 of which

¹State and local governments are subject to the Single Audit Act of 1984 and its implementing guidance, OMB Circular A-128, "Audits of State and Local Governments." Nonprofit entities are administratively subject to the single audit process under OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

²Nonprofit organizations that operate only one federal program may elect to have an audit of that program.

questioned a total of \$1.1 million in disaster assistance expenditures. Most of the reports received are audits of the states rather than of communities or other subgrantees. However, as we noted in a recent report, while Single Audit Act reports on grantees are required to be sent to the funding federal agency, reports on subgrantees are not so required, and many federal agencies thus do not receive reports on subgrantees even when they are prepared.³

FEMA Inspector General Audits

FEMA's OIG audits the recipients of public assistance funds on a selective basis and has identified inappropriate disbursements to recipients. For reports issued in the 6 fiscal years ending September 30, 1995, the OIG has questioned over \$83 million in subgrantees' public assistance costs.

Scope of OIG Audit Coverage

The OIG attempts to audit any disaster when asked to by the appropriate FEMA regional office, as staffing availability permits.⁴ However, the staff available to perform the audits is limited; the OIG has 8 full-time and 17 temporary or part-time employees in two district field offices. A great many subgrantees, and even entire disasters, are not audited by the OIG.

Officials in the OIG's Eastern District Office could not estimate their audit coverage but said that the number of subgrantees and DSRs they review varies from disaster to disaster. They felt that although many recipients, and even entire disasters, were not audited, a more significant percentage of the dollars was audited by focusing on where the large sums of money went. For example, although the officials had looked at only about 20 of the several hundred public assistance subgrantees for Hurricane Hugo, they believed those subgrantees represented about \$200 million of the \$240 million in public assistance costs (but could not confirm this estimate without a time-consuming review of their records). Officials in the OIG's Western District Office said that less than 10 percent of the disasters receive some sort of OIG audit coverage. Overall, they believe that probably less than 1 percent of DSRs are covered.

The states may also perform audits of specific subgrantees. Currently, California is the only state that has an arrangement with FEMA's OIG to do

³Single Audit: Refinements Can Improve Usefulness (GAO/AIMD-94-133, June 21, 1994).

⁴The OIG has also recently begun participating early in the recovery process for large disasters to advise potential recipients of the possibility of an audit, explain to them what they will need in the event of an audit, and survey initial claims to identify problems.

audits that meet generally accepted auditing standards.⁵ (Audit coverage in California is disproportionately important relative to the other states, because in recent years California has received far more public assistance funds than any other state.) However, these audits have been temporarily discontinued while the responsibility for and control over such audits is negotiated between two state agencies. OIG officials said that the Office has attempted to negotiate similar audit coverage from other states, but none of them have agreed to do so, generally citing the difficulty of hiring and paying for the audit staff and keeping a sustained audit effort under way in light of the sporadic nature of FEMA's disaster assistance.

Expenditures Questioned

For the 6-year period from October 1, 1989, through September 30, 1995, FEMA's OIG has reported on 203 subgrantees of public assistance funds, questioning over \$83 million in federal funds charged against approved subgrantee DSRS.⁶

According to OIG officials, ineligible cost claims constitute most of the problems identified. These include claims of non-disaster-related damage, the use of labor and other rates that exceed FEMA-approved rates, the improper calculation of fringe benefits, inadequate documentation, and improper overtime charges. These types of improper charges can be discovered only through close scrutiny of the records as is provided in audits. Examples of questioned costs that did not conform to the approved DSRS included the following:

- One Florida community received \$12.7 million to repair its electrical distribution system damaged by Hurricane Andrew. This amount included over \$6 million in materials, all of which was paid for with a public assistance grant from FEMA. However, the auditors found that not all of the materials purchased were used in the repairs; much of it remained in inventory. City officials agreed that the funds should be refunded. FEMA subsequently deobligated \$1.2 million, over 9 percent of the total grant.
- A state utility in Puerto Rico was awarded \$3.3 million in FEMA funds to cover damages and debris removal for several disasters, of which it had received \$2.3 million at the time of the audit. The auditors subsequently found that the utility had a \$64 million fund to cover uninsured losses.

⁵Generally accepted auditing standards include such things as the technical proficiency of personnel, personal and organizational independence, performing audit steps likely to detect noncompliance with laws and regulations, and an evaluation of the adequacy of the audited organization's internal controls. (See Government Auditing Standards, U.S. General Accounting Office, June 1994.)

⁶In some cases, the recipient may have been able to provide sufficient documentation or other justification for the cost in responding to the audit report.

FEMA program officials agreed to send bills to collect the disbursed amount and deobligate the remainder of the approved award.

- A city in Indiana received \$2.9 million in FEMA funds for debris removal, emergency services, and repairs resulting from an ice storm. However, the auditors found that the city had submitted claims for only \$2.5 million of the \$2.9 million provided by FEMA. FEMA's OIG advised us that the nearly \$400,000 difference was returned.

Changes to Eligibility Criteria Could Reduce the Costs of the Public Assistance Program

Public assistance program officials in FEMA's 10 regional offices identified a variety of options that, if implemented, could reduce the costs of the public assistance program. Among the options recommended most strongly were improving the appeals process; eliminating eligibility for some facilities that generate revenue, lack required insurance, or are not delivering government services; and limiting the impact of building codes and standards. Implementing these options might require amending the Stafford Act and/or FEMA's regulations.

Because available records did not permit quantifying the impact of each option on public assistance expenditures in the past, and because future costs will be driven in part by the number and scope of declared disasters, the impact on future public assistance costs is uncertain.

Recommendations by FEMA's Regional Officials for Reducing the Costs of the Public Assistance Program

We asked public assistance officials in FEMA's 10 regional offices for their perspectives on the program. We sought their opinions because they are involved in the day-to-day operations of the public assistance program, giving them a high degree of expertise. Using a telephone survey, we asked the FEMA officials to identify options that could potentially reduce the costs of public assistance. In a follow-up mail questionnaire, we asked the respondents to rate each option to indicate how strongly they recommended implementing each.¹ We also asked the respondents to elaborate on the options they recommended most strongly and to identify the potential obstacles to implementing them, where appropriate. We asked the National Emergency Management Association (NEMA), which represents state emergency management officials, to respond to the options that the FEMA officials generated because implementing many of the options would affect the states.

Following are the options that the FEMA respondents rated most highly² when considering changes to the eligibility criteria that could reduce the public assistance program's costs. In addition to describing each option, we provide, where appropriate, examples related by the officials, the dissenting views of FEMA respondents, and NEMA's views. We did not independently verify the accuracy of information that the officials cited in

¹We obtained a single response from each regional office. The details of the survey are in appendix II.

²We defined "most highly rated" as those options which received at least a 5.7 mean average response from FEMA respondents (on a scale of 1 to 7) or those for which at least eight respondents assigned at least a "5." We considered every rating above "4" as an indication of support for implementing the option.

their examples. (A list of other options generated by FEMA regional officials appears in app. II.)

Appeals Policies Could Be Improved

Responding officials highly rated two options concerning the appeals process:

- Limit funding for temporary relocation facilities during appeals, because the appeals process can take several years. This option would be comparable to the insurance industry's practice of calculating the maximum allowable costs for temporary relocation.
- Limit the number of appeals to one or two.

Limiting Funding for Temporary Relocations

The rationale provided for this option was that cost savings could be achieved by limiting both the length of time for which relocation costs are funded and the types of facilities eligible for relocation costs. FEMA currently funds the costs of temporarily relocating applicants to suitable quarters while their damaged or destroyed facilities are being restored. If a project is being appealed, the length of time that FEMA funds relocation costs may be extended until the appeal is resolved. One obstacle identified to implementing this option is that objective criteria defining appropriate time frames and usage would need to be developed.

In its July 1995 report, the FEMA OIG noted that it is not unusual for the appeals process to take more than 2 years to complete.³ We found appeals taking more than 5 years. The OIG report stated that since relocation costs are not capped or limited to a specific time, they may provide a disincentive for applicants to resolve disputes.

Two respondents suggested that temporary facilities often are used for years. Applicants may then use this time to maximize the gains from a lease-purchase agreement or to extend the length of time they are eligible to receive funding for relocation costs.

In its July 1995 report, the OIG reported that following the Loma Prieta earthquake, repairs to the Oakland City Hall were in dispute for over 5 years. FEMA's share of the temporary relocation costs for this time period was \$31 million. The OIG reported that the relocation costs, although not necessarily linked exclusively to the appeals process but also to the disputes over damage survey reports, could have been decreased if limits had been placed on the time frame. For example, California State

³Options for Reducing Public Assistance Program Costs (Inspection Report I-02-95, July 1995).

University at Northridge was in temporary quarters for 18 months after the earthquake; FEMA funded 90 percent of the monthly relocation costs of \$300,000. During the 18 months, none of the University's primary buildings with earthquake damage were repaired because of disagreements with FEMA about the required repairs.

NEMA did not endorse this option. NEMA pointed out that the focus of concern about continuing costs during the appeals process should not be on eliminating or limiting relocation costs but rather on complying with the timelines for the appeals process established in FEMA's regulations.

Limit the Number of Stages in the Appeals Process

The other appeals-related recommendation suggests that the appeals process could be truncated. As noted in chapter 2, FEMA's regulations authorize three levels of appeal. The first appeal is to the FEMA Regional Director with jurisdiction over the geographical area in which the disaster occurs. If the Regional Director denies the appeal, the second appeal is to the Associate Director for Response and Recovery at FEMA headquarters. A final appeal may be submitted to the FEMA Director.

The responding officials generally recommended limiting the number of appeals to two—one to the Regional Director and the other to either the Associate Director or the Director. The respondents stated that two appeal stages should be sufficient to fairly consider appeals. (Before 1988, appeals were limited to two stages: the Regional Director and the Associate Director.) According to the July 1995 OIG report, considerable federal staff time and money would be saved if the process was shortened.

However, one FEMA respondent strongly disagreed. He stated that, in some instances, FEMA regional staff do not require as detailed a review as that required by FEMA headquarters staff during the second stage of the appeals process. In his opinion, the increased documentation requirements and field visits result in a more objective opinion than that achieved during the first stage of the appeals process. He added that because few appeals reach the third level, there is no need to eliminate it completely. (As noted in ch. 2, between January 1993 and the end of March 1996, FEMA logged 30 third-level appeals.) Furthermore, he estimated that nearly all appeals that go beyond the first level support the region's decision, but the increased documentation requirements confirm the region's perspective and better support that the decision was reached objectively. Conversely, NEMA endorsed further consideration of this option.

Eliminate Eligibility for
Revenue-Generating
Private Nonprofit
Organizations

The responding officials recommended eliminating eligibility for revenue-generating private nonprofit organizations, such as utilities, hospitals, and universities, because these types of facilities may not serve the general public and may have alternate sources of income sufficient to repair disaster-related damage.

As noted in chapter 2, a wide range of private nonprofit organizations have received public assistance funding, including day-care facilities, community centers, utilities, hospitals, and educational facilities. In July 1995, the OIG reported that since the passage of the Stafford Act, FEMA has provided nearly \$400 million in public assistance for private nonprofit organizations. FEMA funded nearly 90 percent of that amount to utilities, hospitals, and schools. These types of facilities often generate revenue. The respondents stated that such revenue-generating facilities potentially have alternate sources of income to independently repair disaster-related damages. For instance, schools can increase tuition, and utilities can raise rates or obtain loans.

One rationale for this option is that revenue-generating private nonprofit organizations may not provide a service accessible to the general public since they often charge competitive fees for service. The respondents cited Stanford University and Los Angeles' Cedars Sinai Hospital as examples of private nonprofit organizations that have alternative sources of income and that may not serve the general public.

One responding official disagreed that this eligibility criterion should be changed. He stated that some revenue-generating private nonprofit organizations generate revenue to meet their operational costs and may not have sufficient revenue to cover disaster-related costs.

NEMA did not endorse this option, observing that utilities and hospitals provide vital services both during responses to disasters and during nondisaster times. NEMA also noted that because a private nonprofit organization generates revenue does not necessarily mean that it would not face a financial hardship in recovering from a disaster. If these private nonprofit organizations were eliminated from eligibility, the general public would still bear the brunt of the recovery expenses through higher fees for the services provided by the facilities. This approach would, according to NEMA officials, simply shift the burden from the federal government back to the general public.

Eliminate FEMA Funding for Some Water Control Projects

The regional respondents recommended eliminating eligibility consideration for disaster assistance—either completely or by transferring it to the Department of Agriculture (USDA)—for water control projects that do not provide public benefits, for example, those that primarily protect and/or drain unimproved private property—typically farmland—and that are owned by one or not more than a few farmers.

They recommended transferring eligibility for federal funding for water control projects, such as drainage and levee districts, to USDA because the projects tend to be agricultural or rural facilities, generally established to protect farmland from flooding. The USDA's Natural Resources Conservation Service has offices in most counties and works regularly with the drainage and levee districts. (Furthermore, as noted in ch. 1, USDA's existing Emergency Watershed Protection program funds, among other things, a portion of the cost of repairing certain nonfederal levees and other water control works damaged by flooding.) Therefore, according to one respondent, it is more logical for USDA's Natural Resources Conservation Service, which has the historical maintenance and operational expertise that FEMA lacks, to provide assistance for these water control projects.

One respondent suggested that while it may not be apparent that federal cost savings would occur by transferring eligibility consideration to another federal agency, the potential for cost savings does exist. He explained that USDA has limited funding for repairing water control projects and therefore has a priority system. While FEMA provides funding to all eligible water control projects, USDA might not necessarily be able to provide funding to all that have suffered damage. The respondent pointed out that while savings might be recognized, some special districts that are currently eligible might lose their eligibility for FEMA's assistance.

Several respondents mentioned that special districts would prefer FEMA's assistance to USDA's assistance because, for instance, FEMA generally provides larger amounts of funding than USDA and provides the funding more rapidly.

An alternate option raised by some respondents was to eliminate eligibility for federal grants for special districts that do not provide a public service. In some instances, special water control districts are established by one or not more than a few farmers to protect their own farmland. Several respondents suggested eliminating eligibility for those special districts that could not demonstrate that they provided public benefits, such as

protecting improved property. An example of improved property is an area where there are a substantial number of residences, such as urban areas. Two examples of special districts in urban areas are (1) in Arizona, where there are countywide flood control districts, and (2) the Denver Urban Drainage District, which integrates water-related activities between all jurisdictions surrounding greater Denver. One respondent explained that special districts in rural areas generally do not address health and safety threats because the drainage ditches are usually miles from residential areas.

The financial impact of funding disaster assistance for special water control districts can be great. For example, in Iowa alone, following the Midwest floods of 1993, the federal share for the 80 drainage districts that applied for FEMA's assistance was about \$7.5 million.

One obstacle that the respondents identified to eliminating eligibility for special districts that do not provide a public service would be establishing an objective and clear definition of "special district" and "providing a public service." NEMA concurred that special districts that do not provide a public service could be eliminated for eligibility but stressed the need for clear definitions. The Association of State Floodplain Managers, which represents over 3,000 state and local floodplain managers, also concurs with this option provided that it applies solely to districts that deal with agricultural protection. They also cited the need of a clear definition of "special district."

Limit the Impact of Codes and Standards on Federal Assistance

As noted in chapter 2, building codes and standards significantly affect the costs of public assistance; the decision on which standards are "applicable" to a permanent restoration project greatly influences its cost. Seismic code upgrades have proven to be particularly costly. Over the years, one issue that has been debated is whether to reconstruct to the codes and standards in place at the time of the disaster or to higher codes and standards to mitigate against future damage.

The respondents cited three interrelated options concerning codes and standards as strong candidates for change:

- Limit federal funding to the eligible cost of upgrading only the parts of the structure damaged by the disaster. Applicants would bear the expense of upgrading undamaged parts of the structure.

- Tighten the wording on codes and standards to define what entity, such as a state or local government, has the authority to adopt and approve codes and standards.
- Limit the time after the disaster during which new codes can be adopted.

Upgrade Only
Disaster-Damaged Portions of
Structures

The respondents suggested that only the damaged portions of facilities should be eligible for upgrading. The regulations authorize the upgrading of facilities to current codes and standards when the pre-disaster condition of the facilities does not conform with current standards. According to the FEMA OIG's July 1995 report, FEMA program officials estimate that the majority of upgrading costs are more than 500 percent of the cost of repairing actual disaster damage. In many cases, the total eligible costs far exceed the actual repair costs because of triggers that require upgrades to major systems throughout the structure as well as costly items such as asbestos removal.

The FEMA respondents suggested that code upgrades should be limited to the parts of the structure damaged by the disaster. The expense of upgrading undamaged parts would be borne by the applicants. Upgrading significantly raises the cost of public assistance in large disasters: In the Northridge earthquake, seismic standards, in some instances, required upgrading undamaged portions of disaster-damaged structures.

NEMA did not support the implementation of this option, pointing out that limiting repairs to the damaged portions of facilities would not be a cost-effective approach to spending federal tax dollars. NEMA stated that the federal government must comply with codes and standards and cannot pick and choose what parts to recognize. For example, the undamaged portions of a structure are generally part of the force-resisting system. If that system is not upgraded to the same standards as the rest of the system, there is a likelihood of a weak link that would fail in future disasters.

One FEMA respondent generally agreed with the NEMA perspective. He stated that FEMA should enforce local codes and ordinances when there is a history that those codes and ordinances were being enforced prior to the disaster.

Define the Authority for
Adopting Standards

FEMA respondents cited a need to better define who has the authority to adopt and approve codes and standards. As noted in chapter 2, to be considered "applicable," written building codes and standards must be formally adopted by the jurisdiction in which the facility is located, or be a

state or federal requirement. The codes and standards do not necessarily have to be in effect at the time of the disaster.

Following the Northridge earthquake, a decision on assistance for restoring damaged hospitals was delayed for 2 years because of a dispute over which standards were applicable: those promulgated by the California Office of Statewide Health Planning and Development (the Health Office) or the standards in the California Building Code. FEMA officials stated that the Health Office did not have the authority to amend the state code. FEMA determined that one hospital was eligible for \$3.9 million, the amount required to repair the building in a manner consistent with the state code. As the grantee, California argued that the hospital was eligible for \$64 million; FEMA, after reviewing the request for additional funding, offered \$6.8 million for repairs and upgrades. The Health Office's standards would have required demolishing and replacing the hospital. On December 6, 1995, the FEMA Director announced that the agency would provide funding for the hospitals using discretionary authority to fund mitigation measures. On March 12, 1996, FEMA announced that it would provide nearly \$1 billion in federal funds to repair or replace four hospitals damaged by the Northridge earthquake. The hospital cited above will receive \$29.3 million.

The respondents to our survey suggested that clarifying the language in the regulations to define what entity has the authority to adopt and approve codes and standards might reduce the confusion that surrounds this issue and the costs.

Limit Time Period for Adopting New Codes

FEMA's regulations state that building standards can be adopted by the applicant up to the time FEMA approves a project. In some instances, especially catastrophic disasters such as earthquakes, projects are not approved for years. According to FEMA, such delays may be attributable to insurance questions, environmental reviews, or reviews required by the National Historic Preservation Act.

FEMA respondents suggested that the regulations should be revised to limit the length of time after the disaster during which codes can be adopted. The respondents had varying views on what the time limit should be, but they generally agreed that some limit would be useful. The suggestions ranged from about 1 month to about 1 year after a disaster occurs. The respondents generally agreed that the limit should give sufficient time to allow the codes in place at the time of the disaster to be evaluated and strengthened to mitigate against future damage but should not provide an

opportunistic window for applicants to gain the maximum amount of federal funding.

According to one respondent, providing more than a few months for the applicant to enforce new codes provides too long a period of opportunism. In his opinion, the costs of FEMA's public assistance for the Northridge earthquake and the 1993 Midwest flood were higher because the applicants adopted new standards after the events, but before FEMA approved specific projects. The respondent explained that because FEMA lacks a clear and consistent internal policy on codes and standards, its interpretation of eligibility is subjective and not completely accountable.

Another respondent suggested limiting the time because codes are always changing, which makes it difficult to determine which codes are applicable. The codes may change as a result of a number of factors, including changes in technology and the identification of new degrees or kinds of hazards.

NEMA endorsed this option for further consideration. However, one FEMA respondent did not completely concur. He stated that although he was not opposed to a time limit, that limit would have to allow communities sufficient time to fully explore and adopt the most appropriate codes for their highest risks. Furthermore, he stated that FEMA should develop acceptable minimum codes for each type of peril. As in the flood insurance program, public entities should be expected to build to those codes and carry sufficient insurance. If the public entities did not comply, they would be penalized, e.g., the amount of the award would be reduced by the amount of insurance coverage that should have been provided, or no DSRS would be signed until new codes were adopted.

Several respondents recommended revising FEMA's regulations to disallow the adoption of codes after the disaster occurs. Funding would be limited to repairing the damaged facility to comply with the codes and standards in effect at the time of the disaster occurrence.

Insurance Criteria Could Be Strengthened

Respondents recommended two options related to insurance:

- Require insurance for public entities when insurance is reasonably available.
- Reduce or eliminate eligibility for facilities that are not at least partially covered by reasonably available hazard insurance.

Eliminating Waivers

The regulations provide that FEMA will provide assistance only once before the applicant is required to purchase and maintain insurance against future loss. Applicants are required to commit to purchase and maintain insurance in the amount equal to the eligible damage if the damage exceeds \$5,000. The regulations state that future assistance will be contingent upon this commitment. In some instances, FEMA has waived the insurance requirement and has provided funding as a result of damage from a recurring similar disaster. The responding officials recommended adherence to the regulations, which require that applicants purchase and maintain insurance after FEMA provides initial funds. One respondent recommended that in those cases where insurance has not been purchased after FEMA has provided funds and similar disaster-related damage recurs, FEMA should subtract the limit of available insurance from its grant. Another said that because FEMA has authorized waivers to the insurance requirement, public entities may lack the incentive to purchase insurance.

One responding official stated that he did not believe this eligibility criterion needed revising because he was not aware of waivers being authorized.

Require Reasonably Available
Partial Insurance

The respondents suggested reducing or eliminating eligibility for facilities for which at least partial earthquake, fire, and extended hazard insurance is reasonably available, even if full coverage is not. State insurance commissioners are authorized to determine whether or not insurance is reasonably available. If the commissioner deems insurance not to be reasonably available, FEMA waives the requirement for insurance coverage on public facilities. The respondents recommended requiring partial coverage rather than waiving the requirement for full coverage.

In discussing this option, the responding officials also suggested that the criteria for flood insurance and insurance against damage from disasters other than floods be applied consistently. The Stafford Act requires the purchase of flood insurance as a condition of receiving public assistance in flood-prone areas. If a facility is located in a flood-prone area, is damaged by flooding, and is not covered by flood insurance, the amount of assistance that would be available from FEMA is reduced. However, the Stafford Act does not require insurance against damage by disasters other than floods until after FEMA has already provided funding under a prior disaster declaration. The responding officials suggested that where coverage is reasonably available, public entities should be required to have

insurance coverage for all types of disasters before a disaster occurs rather than after FEMA has provided funding.

NEMA endorsed for further consideration the options of eliminating waivers and requiring partial coverage.

Eliminate Eligibility for Facilities Not Actively Used to Deliver Government Services

The respondents identified three interrelated options that would restrict or eliminate eligibility for facilities that are used for purposes other than the direct delivery of public services:

- Eliminate eligibility for facilities that are owned by redevelopment agencies and are awaiting investment by a public-private partnership. Such facilities are usually abandoned and unoccupiable.
- Restrict eligibility of public facilities to those being actively used for public purposes at the time of the disaster.
- Eliminate eligibility for publicly owned facilities that are being rented out to generate income. For example, facilities owned by local governments and rented to the private sector for use as warehouses, restaurants, stadiums, etc., would not be eligible.

The respondents contended that some facilities, such as those that are abandoned or leased to a private vendor who is generating income from them, should not receive FEMA funding. They suggested that revenue-producing properties and investment properties could be insured by their owners. One issue raised was that the Congress did not contemplate eligibility for redevelopment properties because they are speculative properties, serve no public purpose at the time of the disaster, and are generally unoccupiable or abandoned.

The respondents provided this example:

- The Williams Building had been owned by the San Francisco Redevelopment Agency since the mid-1980s when it was damaged by the Loma Prieta earthquake. At the time of the earthquake, more than half of the building was vacant. The portion that was not rented would have required considerable repair to lure prospective tenants. Although no essential government services were being provided in the facility, FEMA funded nearly \$7 million for this building, including \$2 million for structural stabilization. Currently, the building is unusable. The Redevelopment Agency has requested, and FEMA has approved, the option of using eligible funds for an alternate project.

NEMA stated that eliminating eligibility for facilities owned by redevelopment agencies may be reasonable, especially if the facilities were abandoned at the time of the disaster.

The respondents generally agreed that public facilities that are leased to the private sector, which in turn generates income that may not be returned to the government, should be ineligible for public assistance. Examples of such facilities include warehouses, restaurants, and stadiums. According to the OIG's July 1995 report, such facilities have the ability to generate funds, independent of tax revenues, for the repair of disaster damage.

The respondents recommended eliminating eligibility for public facilities that are leased to concessionaires who generate income because they, like redevelopment properties, do not provide a critical government service. In addition, they stated that the concessionaires often generate sufficient income to carry insurance against disaster losses or to repair damages.

Several examples follow of public facilities that were leased to the private sector but received public assistance from FEMA:

- The Port of Oakland operates 30 ship berths that are leased to private operating companies. It also has authority for the Oakland International Airport. Total disaster funding following the Loma Prieta earthquake was over \$35 million.
- Pier 45 was owned by the Port of San Francisco and leased out to private fish-processing companies. It was also leased out for occasional activities, such as the Italian Festival, attended by thousands of people. Although no essential public services were provided on Pier 45, FEMA funded about \$9 million to repair the facility, which was leased to private vendors who generated income.
- The Gilroy Old City Hall is owned by the City of Gilroy but was not used as the city hall. It had been converted to a restaurant and meeting facility. At the time of the earthquake, the restaurant was not being used because of ongoing renovations. The total funding from FEMA for Gilroy's Old City Hall as a result of the Loma Prieta earthquake was more than \$2 million.
- The Los Angeles Coliseum serves as a major source of entertainment for the greater Los Angeles community. The facility hosts revenue-generating events, such as professional sports events. It suffered extensive structural and cosmetic damage as a result of the Northridge earthquake, and damage survey reports have been written for about \$91 million.

One respondent strongly disagreed with this option. He stated that it is becoming increasingly common for local governments to lease facilities to concessionaires as a means of reducing the cost of delivering government services and increasing tax revenues. He stated that concessionaires should be responsible for carrying insurance on the contents of their business enterprise but not on the facility itself.

NEMA generally concurred that facilities that do not provide a public service should be ineligible. However, the President of NEMA noted that clear definitions and guidelines would need to be developed to distinguish between eligible and ineligible facilities.

**Eliminate Eligibility for
Facilities Not Reasonably
Maintained Prior to the
Disaster**

The respondents recommended eliminating or reducing eligibility for facilities when the lack of reasonable pre-disaster maintenance contributes to the scope of damage from a disaster. According to these officials, in some cases eligible applicants have not adequately maintained facilities before a disaster occurs, due, for example, to budget shortfalls. These facilities may be more likely to be damaged as a result of a disaster. The issue raised is whether taxpayers should pay for repairs to facilities that are structurally deficient before the disaster.

One respondent said that there is a nationwide trend for local governments to insufficiently maintain facilities. As a result, when disaster occurs, the damage sustained to those facilities is more serious and therefore more costly to repair had the facilities been maintained. For example, one respondent noted that during a hurricane of moderate intensity, an entire roof of a facility blew off because it had been improperly attached. Other nearby facilities were not damaged. Had the roof on the seriously damaged facility been properly maintained, the need for federal assistance might have been reduced, if not eliminated.

NEMA officials and one FEMA official noted the need for clear definitions and sufficient guidelines to objectively determine eligibility.

**Eliminate Volunteer Labor
and Donations as Credit
Toward Local Share of
Costs**

Under FEMA's regulations, applicants are eligible to receive credit toward the local share of the costs of public assistance for volunteer labor and donated equipment and material. The respondents recommended eliminating credit for these items, with the rationale that there is no cost to the applicant.

The responding officials stated that it is difficult to establish reasonable costs (dollar values) to be applied to this credit. For example, one stated that experience has shown that the volunteer credit allowance has proven to be a very time-consuming process and relies almost exclusively upon the subgrantees' estimates of the number of volunteers involved, hours worked, and material utilized. As the subgrantees incur no out-of-pocket cost, they do not accurately track volunteer labor and donated material and equipment. Therefore, they are often unable to provide with accuracy the required documentation to support their claims. One respondent noted that the volunteer allowance provides an opportunity for a duplication of federal funding in cases where direct costs and materials are commingled with volunteer labor and donated material and equipment, since it is difficult to distinguish between the two.

FEMA respondents indicated that this allowance was most liberally applied during the Midwest floods. Floods, because of their longer-term nature in flat areas, lend themselves to volunteer labor, such as sandbagging, which occurred extensively during the Midwest floods. FEMA's records indicate that nearly \$1.4 million was obligated for volunteer credits in Iowa in response to the Midwest floods.

FEMA officials explained that this allowance is not unique to FEMA. It is contained in OMB Circular A-87, which authorizes all executive agencies to use the value of donated services to meet cost-sharing requirements. The allowance generally may not be modified by an individual agency.

One respondent acknowledged that the allowance does result in increased federal administrative costs, but he stated that the public benefit of assisting some cash-strapped local governments to meet their share of costs outweighs the increase in administrative costs.

Raise the Damage Threshold for Replacing Facilities

As noted in chapter 2, FEMA's policy authorizes replacing disaster-damaged public facilities when the repair cost exceeds 50 percent of the replacement cost. The responding officials suggested raising the percentage of damage required for FEMA to replace a structure (rather than repair it) to a higher threshold, for example, 80 percent.

The respondents said that the 50-percent threshold is not based on prudent use of federal tax dollars. For instance, the undamaged portions of bridges may be replaced. Bridges have two abutments—one at each end. If one abutment needs to be replaced as a result of disaster damage,

the costs will likely border on the 50-percent threshold. In that case, the entire bridge will be replaced. However, if the threshold was higher, only the damaged abutment would be replaced—not both abutments.

Other organizations have higher replacement thresholds—for example, insurance companies, according to one respondent. FEMA’s Inspector General noted that when insurance companies calculate the costs of repair versus replacement, they determine that if repair is less expensive than replacement, the facility is repaired. Other federal agencies also have higher thresholds. For example, the Department of Transportation and HUD require that replacement be more cost-effective than repair. The Inspector General identified, as an option for reducing the costs of public assistance, revising FEMA’s regulations to raise the threshold repair cost that triggers the replacement of a public facility.

One respondent offered a different perspective. He stated that FEMA had already taken steps to control replacement costs when the agency clarified this policy in June 1995.⁴ The revised policy states that the 50 percent should be calculated on the actual costs of the disaster damage—exclusive of the cost of, for example, seismic upgrading, plumbing, heating, asbestos removal, mitigating against future damage, and other nonstructural repairs. Before the policy was clarified, these types of costs had been considered in repair cost calculations. According to this respondent, the clarified policy does not require additional revision because, although it does not address the 50-percent threshold, it will likely save substantial federal outlays.

The Association of State Floodplain Managers saw merit in raising the percentage provided it does not apply to buildings insurable under the National Flood Insurance Program. In commenting on a draft of this report, FEMA noted that revising the damage threshold for public assistance eligibility would have no effect on the requirements of the National Flood Insurance Program or local floodplain regulations. NEMA did not completely concur with revising the 50-percent replacement rule, stating that the rule is a cost-effectiveness test for deciding if federal money is better spent in repairing or replacing a damaged facility. NEMA warned that arbitrarily raising the threshold would result in an invalid test of cost-effectiveness and suggested that a true measure would be a sliding scale taking into account the age of the facility, the economy of the surrounding community, and the function of the facility.

⁴“Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1), (The 50% Rule),” Response and Recovery Directorate Guidance No. 4511.61 E, June 1, 1995.

NEMA Officials Cited Additional Options

As noted above, NEMA endorsed for further consideration many of the options most strongly recommended by FEMA respondents. However, the President of NEMA questioned whether public costs would be reduced by the options identified by FEMA respondents, noting that costs could be shifted from the federal level to the state level and not necessarily reduced.

NEMA proposed that considerable savings in the federal costs of public assistance could be realized by reducing the federal administrative structures. NEMA also endorsed for further consideration the following options, identified but not most strongly recommended by FEMA respondents:

- Eliminate eligibility for postdisaster beach renourishment, such as pumping sand from the ocean to reinforce the beach.
- Limit the scope of emergency work to the legislative intent. (NEMA believes that assistance for debris removal and emergency protective measures has been used for permanent repairs.)
- Eliminate eligibility for revenue-producing recreational facilities, e.g., golf courses and swimming pools.

The rationale that NEMA provided for eliminating eligibility for postdisaster beach renourishment is that it is prohibitively expensive, provides only temporary relief, and encourages the development of oceanfront property, which makes that property vulnerable to future flooding. Seven of the 10 FEMA respondents also recommended implementing this change. One noted that, like other water control projects, beach renourishment could be handled by USDA or the Corps of Engineers.

As noted in chapter 1, the regulations provide for the eligibility of emergency work and permanent restoration work. The purpose of emergency work, i.e., debris removal and protective measures, is to eliminate or lessen immediate threats to life, public health, and safety. Permanent restoration work is a longer-term process that involves restoring the damaged facilities to their pre-disaster condition.

NEMA stated that the scope of emergency work is not always interpreted consistently. According to NEMA, one obstacle to implementing this option is that “temporary” would need to be clearly defined and the legislative intent would need to be thoroughly explored. NEMA advised that federal regulations must not conflict with or limit the authority of the code enforcement agency in the legally binding determination of temporary

repair. Six of the 10 FEMA respondents concurred that this option should be implemented.

The option of eliminating the eligibility of revenue-producing recreational facilities involves the issue that recreational facilities may not represent an essential component of a community because they may not serve a purpose related to health and safety. According to the July 1995 OIG report, recreational facilities, such as golf courses and tennis courts, could be said to fall into the “nice to have” category since many fully functional communities do not have them. Furthermore, as discussed earlier, revenue-generating facilities may have an alternate source of income for repairing disaster-related damages.

NEMA noted that one obstacle to eliminating revenue-producing recreational facilities is that a clear definition of “revenue-producing facility” would need to be developed. Other eligible government facilities besides recreational ones produce revenue and could be determined ineligible without a clear definition. In addition, according to NEMA, in certain instances, a revenue-producing recreational facility may play a critical role in the economic redevelopment of a stricken area.

Five of the 10 FEMA respondents also supported implementing this option. FEMA has already eliminated from eligibility private nonprofit organizations providing recreational services since they do not provide an essential governmental service.

Conclusion

FEMA public assistance officials identified a number of options that they believe could help reduce future public assistance costs. A number of their recommendations are consistent with options proposed by FEMA’s Inspector General, with GAO’s past work,⁵ and with our current review. Furthermore, the options highlight a number of instances in which the existing eligibility criteria need to be clarified or strengthened with additional guidance, as we recommended in chapter 2.

Recommendation

We recommend that the Director of FEMA determine whether the options identified in this chapter should be implemented and, if so, take actions to implement them, including, if necessary, proposing changes to legislation and/or FEMA’s regulations.

⁵For example, *Earthquake Recovery: Staffing and Other Improvements Following the Loma Prieta Earthquake* (GAO/RCED-92-141, July 30, 1992) and *Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding* (GAO/RCED-94-193, June 17, 1994).

Major Legislative Changes Affecting Eligibility for FEMA's Public Assistance

The Stafford Act of 1988 is an expansion of the first permanent authority (P.L. 81-875) enacted in 1950 to provide disaster assistance on a continuing basis without the need for congressional action.¹ Over the years, the Congress has generally increased eligibility for public assistance through legislation that expanded the categories of assistance and/or specified the persons or organizations eligible to receive the assistance. In some cases, the legislation also imposed requirements as a condition of eligibility, as shown by the following chronology:

- In 1962, Public Law 87-502 authorized the emergency repair or temporary replacement of damaged state facilities; local facilities already were eligible for such assistance under the 1950 act.
- In 1966, Public Law 89-769 authorized the repair of damaged higher-education facilities and reimbursement to states and localities for the repair or restoration of damaged public facilities.
- In 1969, Public Law 91-79 authorized grants for 50 percent of the cost of repairing nonfederal-aid highways or roads. (As discussed in ch. 1, the Department of Transportation assists in the repair and restoration of federal-aid highways and roads.)
- The Disaster Relief Act of 1970 (Public Law 91-606) authorized grants of up to 100 percent of the cost of repairing or replacing public facilities. The law also established compliance with the applicable building codes as a condition for receiving federal funds to repair or replace public facilities.
- In 1971, Public Law 92-209 authorized grants for the repair or replacement of nonprofit privately owned medical facilities damaged in declared disasters.
- The Disaster Relief Act of 1974 (1) expanded the category of public facilities eligible for repair or replacement to include educational and recreational facilities and similar nonprofit facilities and (2) allowed localities to select an “in-lieu” contribution of 90 percent of the estimated cost of repairing or replacing all public facilities to be used as needed to build new facilities. The law also required state and local governments to take actions to mitigate future losses as a condition for receiving grants or loans and required insurance (including self-insurance) to be maintained as a condition for receiving disaster assistance in the future.
- In 1988, Public Law 100-707 (1) established 75 percent as the minimum level of federal assistance to be provided for the removal of debris and repair of public facilities and (2) authorized federal reimbursement for the expenses associated with administering federal assistance. The law also

¹In 1988, P.L. 100-707 amended existing disaster relief legislation and renamed it the Stafford Act.

Appendix I
Major Legislative Changes Affecting
Eligibility for FEMA's Public Assistance

mandated that federal assistance for repairing public facilities in flood zones be linked to participation in the National Flood Insurance Program.²

²Communities participating in the National Flood Insurance Program must follow the program's building standards that are aimed at minimizing flood losses.

Survey of FEMA's Regional Officials

To develop an understanding of options for reducing¹ public assistance program costs, we surveyed officials responsible for administering the program in each of the Federal Emergency Management Agency's (FEMA) 10 regional offices. Through a telephone survey, FEMA officials identified options that could potentially reduce the costs of public assistance. In a follow-up mail questionnaire, we asked the respondents to rate each option to indicate how strongly they recommended implementing each. While we asked the respondents to rate each option in connection with its potential for reducing the program's costs, to some extent the ratings that FEMA officials assigned reflect their personal views. We subsequently telephoned the respondents to obtain additional information on or clarification of their responses.

In addition to obtaining a federal perspective, we obtained a state perspective. We asked the National Emergency Management Association (NEMA), which represents state emergency management officials, to respond to the options that FEMA officials generated, because the states would be affected by the implementation of many of the options. The Association of State Floodplain Managers also commented on the options that affected their constituents.

We limited the scope of our survey to changes that could be made to the eligibility criteria for public assistance. Frequently, FEMA respondents suggested, as a way to reduce federal expenditures for the public assistance program, changing the cost-share formula so that the states and local governments would be responsible for a larger share of disaster costs. However, since that suggestion did not directly result in changes to the eligibility criteria, we considered it beyond the scope of this report.

Following is a list of options generated by FEMA respondents that are not mentioned in chapter 4.

Small Projects

Require an applicant to return funds if the actual cost of a small project is less than the estimated cost.

Fund small projects on the basis of actual rather than estimated costs.

Eliminate funding for small projects.

¹We define "reduce" to mean making future federal disaster assistance costs lower than they would otherwise be if the option was not implemented. Because future costs depend in part on the incidence and severity of disasters, which are unpredictable, we cannot precisely estimate the dollar impact of any option.

Private Nonprofit
Organizations (PNP)

Amend the Stafford Act to eliminate eligibility for PNPs.

Eliminate eligibility for PNPs providing essential governmental-type services to the general public.

Apply a means test to PNPs to determine their eligibility.

Category G (Publicly
Owned Parks, Recreational
Facilities, Museums, and
Zoos)

Convert eligibility for category G projects from public assistance grants to federal loans. Since publicly owned facilities are not currently eligible for loans, a new federal loan program would be required.

Eliminate eligibility for category G projects.

Completion of Work
Deadlines

Eliminate eligibility for cost overruns that occur because work is not completed on time.

Enforce adherence to time limits established in the regulations for activities such as completing work (both emergency and permanent work), reporting damage, making appeals, and submitting a notice of interest. Otherwise, these tasks drag on and become administratively costly.

Alternate/Improved
Projects

Although assessments of the impact on the environment are not generally required for repair and restoration work, they are required for alternate projects. Require applicants to share the increased costs associated with the environmental impact analyses needed for alternate projects.

Require applicants to bear all costs associated with environmental impact analyses for alternate/improved projects.

When an applicant qualifies for relocation costs under a normal grant but selects an alternate project as the funding option, eliminate eligibility for relocation costs.

Amend the Stafford Act to eliminate eligibility for alternate projects.

Floodplain Management
and Water Control

Eliminate eligibility for recreational developments in floodplains.

Eliminate eligibility for dikes, levees, and irrigation control projects. Assistance could be provided by the Corps of Engineers and the Natural Resources Conservation Service (formerly the Soil Conservation Service), organizations that are routinely involved in flood control projects.

Codes and Standards

Amend the Stafford Act to eliminate eligibility for code upgrades by limiting federal funding to the estimated federal cost of returning the facility to its pre-disaster condition and use regardless of code requirements.

Associated Costs

Grantees receive funds for administrative costs in two ways: (1) a statutory fee calculated as a percentage of the public assistance award and (2) a management grant. Tighten the definitions of these two funding mechanisms to prevent duplicate payments.

Although limitations on labor costs associated with services provided by state agencies were instituted in regulatory changes dated October 1993, additional limitations should be considered. To this end, establish a deductible that states would have to satisfy before they were eligible for federal funding on services, including labor, provided by state agencies, such as state transportation departments and state public health departments.

Insurance

The Stafford Act prohibits FEMA from requiring greater types and amounts of insurance than the state insurance commissioner certifies as reasonable. Revise the legislation to require the state insurance commissioner to coordinate with FEMA in determining the types and amounts of insurance reasonably available.

Revise the Stafford Act to shift authority from the state insurance commissioner to FEMA to determine the types and amounts of insurance reasonably available.

Minimum Damage Survey
Report Threshold

Raise the eligibility threshold for permanent work to at least \$5,000, from its current level of \$1,000.

Set a minimum threshold for emergency work above the \$1,000 minimum eligibility requirement.

Emergency Work

Revise FEMA's regulations to make them consistent for labor costs. For emergency declarations, straight time is eligible, while for major disaster declarations, only overtime is eligible. Revise FEMA's regulations so that only overtime is eligible for federal funding for both emergency and major disaster declarations.

Miscellaneous Issues

Eliminate eligibility for landscaping costs (e.g., replacing trees and shrubbery, sodding). However, maintain eligibility for regrading areas and controlling erosion to stabilize sites.

Eliminate the section 406 hazard mitigation funding. The owner of the facility, whether a public entity or a PNP, would be required to cover postdisaster upgrading.

Comments From FEMA

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Federal Emergency Management Agency

Washington, D.C. 20472

APR 24 1996

The Honorable Charles A. Bowsher
Comptroller General
United States General Accounting Office
Washington, DC 20548

Attention: Ms. Judy A. England-Joseph

Dear Mr. Bowsher:

The staff of the Federal Emergency Management Agency (FEMA) and I appreciate the opportunity to comment on your draft report titled Disaster Assistance: Improvements Needed in Determining Eligibility for Public Assistance. The report is clear in its presentation and constructive in its recommendations. We agree in principle with the general recommendations in the report.

The first part of your recommendation calls for the issuance of criteria that more clearly and comprehensively identify what facilities are eligible for public assistance. We support this recommendation and are pleased that your report acknowledges that work toward this end is already in progress. A comprehensive compendium of guidance is being prepared for the Public Assistance Program activity and training of FEMA personnel is being enhanced.

The second part of your recommendation suggests certain time and cost saving measures be considered. We will propose changes in regulations as policy decisions are made on options suggested by you, the FEMA Inspector General (IG), the National Emergency Management Association, FEMA personnel, and others. Reform in the Disaster Assistance Program is one of my top priorities for FY 1996 and FY 1997. I will be exploring both short-term improvement in our current disaster assistance process and options for major program redesign in the future.

We appreciate the report's acknowledgment of the fact that FEMA must rely heavily on temporary disaster employees to execute our programs in disasters and your recognition of the guidance and training challenge this presents. Our permanent staff is very small when contrasted to the incredible workload of major disasters in recent years. In today's budget climate, we do not expect significant increases in permanent staff. However, we do need support from Congress for funding aimed at equipping and training our permanent and temporary workforce to perform effectively.

Despite the fact that we agree in principle with your recommendations, there are places in the report where another perspective on the issue is needed for balance.

We find ourselves in a dilemma. The Congress, through its Stafford Act amendments, has expanded the eligibility for public assistance in recent years. Past attempts by FEMA to tighten or reduce eligibility were precluded by Congressional direction. Some of the options you suggest will severely affect benefits to the States and their citizens and are, therefore, likely to be opposed by some in the Congress. In addition, the more FEMA attempts to tighten eligibility by closely prescribing every possibility, the more we will appear bureaucratic and inflexible. We might be accused of being unreasonable if detailed regulations prevent us from making reasoned judgments needed in the unique circumstances of each disaster. It is difficult to strike the proper balance between being clear yet flexible, and between being cost conscious yet responsive to real needs.

The report is somewhat misleading in attributing the magnitude of increasing costs attributed to the lack of clarity in eligibility criteria. The escalating cost of disasters in recent years is due mostly to the extent of damage from several catastrophic major disasters. This fact is acknowledged on page 20 of your report. If these few abnormally high cost disasters are eliminated from the chart on page 17, the disaster cost history appears more level over time. Increased costs can also be attributed to an emphasis on efforts to increase the level of life safety and prevent repeated losses in future disasters. This "build back better" approach does increase costs in the short term but also results in significant benefits--the prospect of offsetting future loss in life and property through mitigation. If corrected for both the effects of recent unusual disasters and the benefits of mitigation, the rising costs appear much less dramatic.

The following paragraphs refer to specific points in your report that need correction or further clarification:

In your examples on page 36 of how disagreements over eligibility criteria have caused additional expenses for FEMA and applicants, you seem to indicate that FEMA's assessment of structural damage using its own architect and engineering studies is an unnecessary duplication. Such evaluations are not a duplication of the applicant's work, but rather a part of the management oversight of the program to help ensure that cost savings are fully considered.

On page 46, you conclude that FEMA relies on States to ensure expenditures are limited to eligible items. However, FEMA is involved to a greater degree than you suggest. All scopes of work changes and cost overruns are approved by FEMA prior to obligation of additional funding. For individual large projects in which the grantee is required to make an accounting to FEMA of eligible costs, FEMA conducts final inspections and project reviews to verify actual eligible costs. This means that prior to close-out and State certification, FEMA has been directly involved in the evaluation of large project claims.

In your discussion on page 63 regarding limiting the time period for adopting new codes, it is important to note that there are various reasons why project approval might

Now on p. 14.
Table now on p. 12.

Now on p. 24.

Now on p. 31.

Now on p. 43.

Appendix III
Comments From FEMA

be delayed. The scope of the repair or replacement project is often already documented and defined on a Damage Survey Report (DSR) although approval may be delayed for some other reason such as insurance coverage and/or settlement information, environmental review, or review as required by the National Historic Preservation Act. These potential delays do give the applicant extra time to adopt new codes or standards and FEMA is exploring ways to limit the period for adopting new codes. FEMA nevertheless wants to help encourage State and local governments to adopt and enforce more stringent codes in an effort to mitigate future losses.

Now on p. 46.

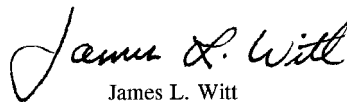
Your example of redevelopment property on page 68 needs to be updated. Of the \$6.8 million obligation for the Williams building, owned by the San Francisco Redevelopment Agency, \$2 million has been expended on structural stabilization. The Redevelopment Agency has requested an alternate project funding option, in which a portion (90 percent) of the total estimate of eligible costs can be used toward other projects (in this case a museum and a historic building). The requested funding option has been approved.

Now on pp. 49 and 50.

On pages 73 and 74 in your discussion of raising the 50 percent damage threshold, it should be noted that the Association of State Flood Plain Managers agreed with raising the threshold percentage provided it does not apply to buildings insurable under the National Flood Insurance Program (NFIP). If FEMA Public Assistance raises the damage threshold for determining eligible costs for repair or replacement, such determination would have no effect on the requirements of the NFIP or local floodplain management regulations. In other words, an applicant located in a special flood hazard area would still have to comply with the minimum floodplain management regulations, regardless of Public Assistance eligibility.

After publication of the report, we will keep you informed regarding action to be taken as the result of our deliberations on the specific approaches you suggest. If you have questions regarding our comments, please contact Mr. Richard S. Shivar, Deputy Director of Policy and Regional Operations at 202-646-3011.

Sincerely,



James L. Witt
Director

GAO's Response

FEMA commented that there are places in the report where another perspective is needed for balance. Our response to these comments follows.

FEMA commented that the report is somewhat misleading in attributing the magnitude of increasing public assistance costs to the lack of clarity in eligibility criteria, noting that the escalating cost of disasters in recent years is due mostly to the extent of damage from several catastrophic major disasters. The language in our report was not intended to attribute the large increase in federal costs to a lack of clarity in eligibility criteria. The report states that the period from 1989 through 1994, during which federal disaster costs increased significantly, encompassed very destructive and costly disasters, including hurricanes Andrew and Iniki in 1992, the Midwest floods of 1993, and the Northridge (California) earthquake in 1994. The report also points out that over the years, legislative changes have gradually expanded eligibility for public assistance; this expansion would certainly have the effect of making federal costs higher than they would be without the expansion. Also, our report notes that FEMA's Inspector General concluded that the regulatory changes made by FEMA may have expanded public assistance costs.

FEMA commented that our report seems to indicate that FEMA's assessment of structural damages using its own architect and engineering studies is an unnecessary duplication and stated that such studies are (rather) a part of management oversight to help ensure that cost savings are fully considered. GAO's point is that the lack of clarity in the criteria for determining the standards "applicable" to the permanent restoration of facilities may lead to both an applicant and FEMA undertaking architectural and engineering evaluations for the same project, which adds to administrative expenses. GAO agrees that in cases in which an applicant and FEMA disagree over which standards are applicable—and thus the scope of work that is eligible for FEMA funding—additional studies by FEMA may result in a narrower scope of work and thus a lower federal cost for the project than would be the case on the basis of the applicant's study alone.

FEMA commented that the agency is more involved in the process of ensuring that expenditures are limited to eligible items than our report suggests, noting that FEMA (1) approves scope-of-work changes and cost overruns prior to obligating additional funds for projects and (2) conducts final inspections and project reviews to verify the actual eligible costs for "large" projects. Our report notes that if a subgrantee wishes to modify a

project or experiences cost overruns after FEMA's initial approval of a damage survey report (DSR), it must apply to FEMA for an amended or new DSR. We added language noting that such applications provide FEMA with opportunities to review the supporting documentation justifying the modification and/or cost overrun. We also added the Director's statement that FEMA conducts final inspections and project reviews to verify actual eligible costs for "large" projects.

Finally, FEMA suggested (1) adding language to clarify why project approval may be delayed, (2) updating an example—the Williams Building—of a redevelopment property that was found eligible for public assistance, and (3) clarifying that increasing the damage threshold for public assistance eligibility would have no effect on the requirements of the National Flood Insurance Program. GAO revised the report as FEMA suggested.

Major Contributors to This Report

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Disaster Assistance: Information on Declarations for Urban and Rural Areas (GAO/RCED-95-242, Sept. 14, 1995).

Disaster Assistance: Information on Expenditures and Proposals to Improve Effectiveness and Reduce Future Costs (GAO/T-95-140, Mar. 16, 1995).

GAO Work on Disaster Assistance (GAO/RCED-94-293R, Aug. 31, 1994).

Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding (GAO/RCED-94-193, June 17, 1994).

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