

PRACTICE FOCUS / GOVERNMENT

No Obligation to Deobligate Saves Money and Provides Certainty

Commentary by
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With word recently that Congress passed legislative language in the Federal Aviation Administration (FAA) reauthorization bill that amends the FEMA Stafford Act, one could almost hear the collective sigh coming from local governments in disaster-prone regions throughout the country.

Over the last decade in Florida alone, numerous counties and local governments have been forced by the Federal Emergency Management Agency (FEMA) to “clawback” or “deobligate” funds for repairs and debris removal that FEMA dispensed during the 2004-2005 hurricane season that saw Hurricanes Katrina, Francis and Charlie ravage much of the state.



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KELLIE THOMAS/FEMA

FEMA’s capriciousness about demanding its money back long after the fact has long been bitterly contested at the local level.

For example, from 2005, Collier County had funds from Hurricane Wilma obligated, deobligated, and then reobligated over a 12-year period. Collier County is just now reaching an agreement with the Florida Department of Emergency

Management (FDEM) to obtain several million dollars in reimbursement for expenditures that FEMA previously reobligated after a lengthy and costly appeal.

Another example: after the 2004 and 2005 hurricane seasons, the city of Hialeah was awarded millions of dollars from FEMA to assist in its recovery. Years later, after the funds were spent,

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FEMA requested these funds to be paid back.

A local government's lengthy appeals to FEMA often outlive the original participants, which makes the process drawn out and more costly to both entities.

The uncertainty that was built into the original process hampered budget planning and fund distribution.

Additionally, many in local government were outraged that FEMA could deobligate previously awarded disaster funds for projects that have been certified complete by the state.

This new legislation amends the FEMA Stafford Act to prohibit any administrative action by FEMA to recover payments made to a state or local government for disaster or emergency assistance, except for fraud, after three years following the final report for a completed project.

The new law applies to any payment provided by FEMA on or after Jan. 1, 2004. It would also stop any action by FEMA to recover payment that is pending

on the date of enactment of the bill.

The new legislation also limits the ability for the Homeland Security Inspector General's office to conduct audits to three years after the project completion.

Prior, the accounting, maintaining relevant documentation and procurement were a headache for over a decade, and local governments had to be prepared for a potential audit at all times. Audit delay and litigation left Florida's counties and cities responsible for surprise payments and last-minute budget confusion.

Finally, Congress has sent to the president's desk a way to stop future FEMA "clawbacks" of long-since approved and expended funds for hurricane recovery efforts, and to prevent lengthy and expensive reobligation appeals that place a significant strain on local government operational funds.

For Hialeah, this new legislation prevents FEMA from deobligating these funds, saving

Hialeah and the taxpayers over \$2.6 million and maximizing their financial recovery.

The new law will ensure that the process will be more objective, allowing FEMA enough time to review their payments and discover fraud or other improprieties while allowing for increased financial certainty that will help Florida's communities recover more quickly from future hurricanes and other disasters.

Although it took almost four years to pass, the result and certitude will be worth it. The bipartisan effort that went into passing this legislation is also noteworthy. Reps. Lois Frankel, Mario Diaz-Balart and Debbie Wasserman Schultz, Sens. Bill Nelson and Marco Rubio and the rest of the Florida Congressional Delegation worked together to realize this achievement.

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