

# Congress of the United States

## U.S. House of Representatives

January 14, 2021

Joseph R. Biden, Jr.  
President-Elect of the United States  
Biden-Harris Transition  
1401 Constitution Avenue, N.W.  
Washington, DC 20230

President-Elect Biden:

We write to urge you to fully exercise your authority pursuant to the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act, P.L. 93-288 as amended) to waive all cost-share requirements for the emergency declarations declared on March 13, 2020, and any subsequent major disaster declarations for all states, tribes, territories, and the District of Columbia for the ongoing COVID-19 pandemic.<sup>1</sup> By invoking Section 501(b) of the Stafford Act, President Trump granted assistance “...when he determine[d] that an emergency exists for which the primary responsibility for response rests with the United States, because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.”<sup>2</sup> President Trump did not, however, increase the Federal cost-share to 100 percent for emergency work, including direct Federal assistance, despite the fact that the Federal Emergency Management Agency (FEMA) is authorized to do so.<sup>3</sup>

Since invoking the Stafford Act in March 2020, we have sent multiple unanswered requests to President Trump urging him to exercise this authority to increase the Federal cost-share. Those requests have fallen upon deaf ears during the last ten months, as the toll of the pandemic has exploded. More than 365,000 Americans have now lost their lives to COVID-19—more than 30,000 of them since January 1, 2021<sup>4</sup>—and the budgets of state, local, tribal, and territorial governments are decimated, having suffered precipitous declines in revenues that fund health care, education, public safety, transportation, and other vital programs and services. Despite Federal assistance provided in the CARES Act and the December 2020 omnibus, these governments have spent hundreds of millions of dollars on efforts to prevent, contain, and mitigate the effects of the virus.<sup>5</sup>

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<sup>1</sup> Federal Emergency Management Agency (FEMA), “COVID-19 Emergency Declaration Factsheet (HQ-20-017-FactSheet)” (Mar. 13, 2020). Available at <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration>.

<sup>2</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288.

<sup>3</sup> 44 CFR § 206.47(d).

<sup>4</sup> COVID Tracking Project at The Atlantic, “The Data – Totals for the U.S.” Available at <https://covidtracking.com/data/national>.

<sup>5</sup> The Wall Street Journal, “State, Local Governments Slashed Spending After COVID. Next Year Could Be Worse” (Nov. 29, 2020). Available at <https://www.wsj.com/articles/state-local-governments-slashed-spending-after-covid-next-year-could-be-worse-11606669200>.

Other than the American death toll of World War II, this pandemic and the exponential growth in infections and fatalities are unlike any other events our nation has experienced since the 1918 influenza epidemic, well before the establishment of FEMA in 1979 or the adoption of Presidential Policy Directive-44 in November 2016—the Federal plan for enhancing Federal domestic incident response. The ongoing response has stretched beyond the capabilities of state, local, tribal, and territorial governments and warrants the full resources and support of the Federal government. This is all the more apparent as the effort to vaccinate Americans has stumbled in recent weeks, despite assurances that 20 million Americans would be vaccinated by the close of 2020.<sup>6</sup>

In addition to exercising your authorities to waive the non-Federal share for Stafford-eligible assistance, we encourage you to repeal FEMA Policy FP 104-009-19, “Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)”.<sup>7</sup> This FEMA policy was issued nearly six months post-Stafford invocation, and the policy further restricted certain reimbursements for state, local, tribal, and territorial governments that were previously eligible, including those for personal protective equipment. A coalition that includes the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, the International City/County Management Association, the U.S. Conference of Mayors, the Council of State Governments, and the National Emergency Management Association all expressed their concern with the policy on August 25, 2020.<sup>8</sup> However, despite verbal assurances in August 2020 from FEMA Administrator Peter T. Gaynor to our colleagues on the House Appropriations Committee that there would be no reduction in eligibility tied to COVID-response, FEMA released FP 104-009-19 on September 1, 2020, absent any engagement with relevant external stakeholder groups.

We urge you to swiftly direct the Administrator of FEMA to repeal FP 104-009-19; to increase the Federal cost-share for assistance provided pursuant to sections 502 or 403 of the Stafford Act to 100% for the emergency declarations issued on March 13, 2020, and any subsequent major disaster declaration under section 401 that supersedes such emergency declaration; and to fully harness the logistics capabilities of FEMA to coordinate vaccination distribution and administration with state, local, tribal, and territorial governments across the nation. These actions will ensure governments, citizens, and businesses in communities across the country will have the vital Federal resources they need to continue working to defeat this pandemic and build back better.

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<sup>6</sup> CBS News’ Face the Nation, “Azar says all nursing home residents could be vaccinated by Christmas” (Dec. 13, 2020). Available at <https://www.cbsnews.com/news/covid-19-vaccine-alex-azar-face-the-nation/>.

<sup>7</sup> FEMA, “Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim) (FEMA Policy FP 104-009-19)” (Sept. 1, 2020). Available at [https://www.fema.gov/sites/default/files/2020-09/fema\\_public-assistance-eligibility-for-covid\\_policy\\_9-1-2020.pdf](https://www.fema.gov/sites/default/files/2020-09/fema_public-assistance-eligibility-for-covid_policy_9-1-2020.pdf).

<sup>8</sup> National Governors Association, “Letter to FEMA Regarding COVID-19 Reimbursable Expenses” (Aug. 25, 2020). Available at <https://www.nga.org/advocacy-communications/letters-nga/letter-to-fema-regarding-covid-19-reimbursable-expenses/>.

President-Elect Joseph R. Biden Jr.

January 14, 2021

Page 3

Thank you for your consideration of our request.

Sincerely,

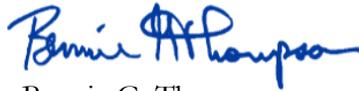


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cc: Robert J. Fenton, Jr., Acting Administrator, Federal Emergency Management Agency

The Honorable Sam Graves, Ranking Member, House Transportation and Infrastructure Committee