

LEGISLATIVE UPDATE

2021 ANNUAL FORUM
CLEVELAND, OHIO



SUMMARY

What a wild ride it has been since the last pre-Forum Legislative Update which occurred before we all traveled to Idaho in 2019. Since that time, the world has gone to Zoom, Congress conducted impeachment hearings, the White House and Senate changed political hands, emergency managers now know painful details of the N95 mask and ventilators, and we're all still trying to figure out what "normal" is again so we can get there.

The emergency management community continues making huge strides in advocacy in and around Capitol Hill. Through two supplementals and a continuing resolution, NEMA worked closely with Appropriators and Congressional leadership to secure an unprecedented three supplementals for EMGP totaling \$250 million. We also worked closely with the Hill and partner associations to gain accommodations such as cost share adjustments during a time which administrative hurdles seemed too much for some to break down.

Just hours before the government was set to shut down on September 30, Congress passed a continuing resolution to extend funding the government through December 3. The passing of this legislation, [H.R 5305](#), means that there is now **\$50 million in increased funding for Emergency Management Performance Grants** and allows FEMA to access the full annual appropriation for the DRF for FY2022. While the passage of this stopgap bill buys time for the Biden Administration to continue negotiations on its two-pronged budget approach, uncertainty looms over the passage of the infrastructure package and spending bill with Republicans united against the combined \$4.7 trillion price tag and moderate democrats against the measure as well.

In the meantime, the important work of engaging law makers on emergency management issues continues. The success of these efforts is in no small part to the individual relationships built by NEMA members among the Members of Congress.

CONGRESSIONAL ENGAGEMENT

In addition to the numerous meetings, calls, and informal engagements required to secure the passage of legislation, NEMA joined with several other associations in recent months to address specific issues currently before Congress.

- NEMA worked closely with Appropriators and Congressional leadership to secure an unprecedented three supplementals for EMGP totaling \$250 million.
- With the change of the majority in the Senate, NEMA joined with IAEM in conducting several introductory meetings with either new Hill staff or those recently shifting into the majority/minority. At this time, we held meetings with most major committees with jurisdiction over NEMA priorities.
- Throughout the year, NEMA partnered with other stakeholder associations to such collaborate on legislative activities. These groups include stthe Hazards Caucus Alliance, Stafford Act Coalition, and Flood Map Coalition in representing myriad issues before Congress.

HEARINGS & MARK-UPS

The face of hearings took on a whole new look in the COVID environment, but the motions of discussing important emergency management issues did not slow. Notable hearings at which NEMA was represented in the pre- and post-

COVID Congressional hearings include:

- October 22, 2019; Mike Sprayberry (NC) represented NEMA at a hearing before the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management. The hearing focused on an assessment of federal recovery efforts from recent disasters. Central to Sprayberry's comments was North Carolina's experience with federal programs in disaster recovery, particularly CDBG-DR. He also emphasized the need for a more coordinated collaboration at the federal level for grant programs to better assist disaster survivors and the need to increase the rate of insurance against hazards nationwide.
- June 24, 2020; Andrew Phelps (OR) represented NEMA at a virtual hearing before the Senate Homeland Security and Governmental Affairs Committee. The topic of the hearing centered around the role of the Strategic National Stockpile during a pandemic response. Phelps outlined challenges with the overall response, including the changing leadership structures and the delay on guidance for using CARES Act funding as a FEMA cost-share. He then noted the issues with expectation management for the SNS, as states have trained and exercised to rely on infusions of supplies from the SNS during times of crisis as well as supply chain management issues.
- March 18, 2021; Russ Strickland (MD) represented NEMA before the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management. The hearing focused on the benefits of investing in resilience and mitigation. Strickland underscored the benefits of investing in mitigation pre-disaster, integrating community lifelines into resilience efforts, the need for public-private partnership, and the role of building codes in avoiding losses in disasters. Recommendations included ensuring that the full six percent of eligible disaster expenditures are set aside every year for BRIC, federal support for adopting appropriate building codes without taking punitive steps, reducing the complexity of federal programs so states and localities can utilize programs effectively, and allowing for co-mingling of grant funds for better linkage of project priorities.
- September 29, 2021; Sima Merick (OH) represented NEMA before the Senate Homeland Security and Governmental Affairs Committee. The hearing centered around the current state of disaster preparedness and Merick stressed the importance of building state capacity, mutual aid, and simplifying response and recovery programs. Senators shared in the concerns expressed about the bureaucratic slow-down of disaster response and recovery due to FEMA's processes and policies.

In March 2020, state directors Curtis Brown (VA), Mark Ghilarducci (CA), and Patrick Sheehan (TN) testified before the House Appropriations Committee Subcommittee on Homeland Security on the role of FEMA and emergency management in COVID-19 response. The directors emphasized the importance of EMPG supplemental funding from the CARES Act, the need to prioritize equity in COVID-19 response and traditional disaster response and recovery, the challenges of simultaneous responses this year, and lessons learned from the pandemic. Some recommendations included building equity into FEMA policies and programs, building emergency management enterprise capacity, defining the Strategic National Stockpile's (SNS) mission, and developing triggers for invoking the Defense Production Act (DPA), creating a universal application for disaster survivors, raising the small projects threshold, ensure FEMA policy consistency, and designating FEMA the federal lead during nationwide incidents. Other witnesses were Acting FEMA Administrator Bob Fenton and Los Angeles County Office of Emergency Management Director Kevin McGowan.

HIGHLIGHTS FROM AROUND D.C.

♦ Biden Moves Quickly to Tackle COVID ♦

Upon taking office, the Biden Administration dispensed with the pleasantries of needing to know where the restrooms are and immediately signed a series of executive orders. Several of these pertain to emergency management, including the invocation of the Defense Production Act (DPA) to fill supply chain shortfalls related to pandemic response and designing

a strategy to domestically manufacture supplies necessary to a pandemic response; increasing the federal cost-share for National Guard activities and FEMA Category B Public Assistance expenditures related to the pandemic to 100 percent moving forward; a mask mandate in federal buildings; establishing a COVID-19 pandemic testing board; ensuring an equitable response and recovery from COVID-19; and developing a strategy to safely reopen schools nationwide. Several of the orders effectively reinstated FFRMS, at least for now. NEMA has specifically advocated for several of these issues. [View the full list of presidential actions here](#). The Biden Administration also developed a Concept of Operations which would, among other things, task FEMA with creating 100 mass vaccination sites nationwide.

♦ Stakeholders Brief Appropriations Staff on Emergency Management Assessment ♦

In February, NEMA Vice President and Vermont state director Erica Bornemann joined FEMA officials and representatives from IAEM, BCEM, and EMAP to provide a briefing on assessing emergency management programs. The briefing came about as a result of FY19 appropriations report language which stated: “*The Committee notes that SLTT emergency management programs in the United States vary in size, scope, and approach. Improvements and a comprehensive understanding of capability can be gained when these programs are evaluated and recognized for compliance with voluntary standards.*”

FEMA was therefore directed to brief, in coordination with stakeholders, on the utilization of existing assessment programs, the potential for development of new tools, and the obstacles to using such programs. Bornemann stressed that standards are necessary to ensure national and state gaps identified through the THIRA/ SPR process are addressed holistically; cautioned against turning FEMA into a regulatory agency, and reiterated the need for continued federal grant support to sustain built capabilities.

♦ State Emergency Management Directors Meet with Congressional Appropriations Staff ♦

Early in the year, state directors Alicia Tate-Nadeau (Illinois), Bianca Ortiz-Wertheim (New Mexico), Mark Gower (Oklahoma), and Mike Sprayberry (North Carolina) met with House and Senate Appropriations Committee staff on the state of disaster response in the context of the COVID-19 pandemic. Directors noted similar challenges spanning federal funding and reimbursement guidance changes, management and storage of personal protective equipment (PPE), interagency coordination, sheltering programs, delays to funding access, and responding to concurrent hazard events. Recommendations included FEMA considering ways to raise the cost threshold for small projects to shorten the backlog of projects in the Consolidated Resources Center (CRC) process. Appropriations staff were receptive to the issues raised by the directors and are interested in further discussion on ways to ensure disaster response and recovery processes are improved

♦ House Bill Introduced to Minimize Federal Bailouts of Repeated Community Flooding ♦

Representatives Ann Wagner (R-MO) and Earl Blumenauer (D-OR) introduced legislation to strengthen protections for flood-prone communities by incentivizing repeatedly flooded communities to submit flood prevention plans to FEMA as a condition of their participation in the National Flood Insurance Program (NFIP). It also sets deadlines for FEMA to develop criteria on how to govern these plans and determine next steps for communities which fail to act. A version of this legislation did pass the House in 2017 but was not acted upon by the Senate. Additional information will be provided as it is available.

♦ GAO Recommends HUD Take Additional Action to Assess CDBG-DR Fraud Risks ♦

Congress appropriated \$39.5 million in Community Development Block Grant-Disaster Recovery in 2017-2019. The Government Accountability Office (GAO) evaluated some potential risks for fraud, finding that the Department of Housing and Urban Development (HUD) has not conducted a comprehensive fraud risk assessment of CDBG-DR, and its current fraud risk approach does not involve relevant stakeholders, such as grantees. GAO recommends that HUD

comprehensively assess fraud risks to CDBG-DR and involve stakeholders. HUD neither agreed nor disagreed with the recommendations. Read the [highlights page here](#) and the [full report here](#).

♦ **State and Local Cybersecurity Improvement Legislation Introduced** ♦

In May, Members of the House Homeland Security Committee introduced legislation to support improvements in cybersecurity at the state, local, tribal, and territorial levels. Central to the legislation is establishing a \$500 million DHS grant program to SLTT governments addressing cybersecurity risks and threats to information systems. Grants can be offered to multistate efforts and the grants must support the development of or an existing cybersecurity plan. Other elements of the legislation include requiring DHS CISA to develop a strategy to improve SLTT governments' cybersecurity, requiring SLTT governments to develop comprehensive cybersecurity plans, establishing a State and Local Cybersecurity Resilience Committee so SLTTs can advise CISA on their cybersecurity needs, and requiring DHS CISA to assess the feasibility of implementing a short-term rotational program for the detail of approved SLTT employees to cyber workforce positions at CISA. [Read the bill text here](#).

♦ **House Committee Inquires on Low Approval Rates for Disaster Survivor Program** ♦

House Transportation & Infrastructure Committee Chair Peter DeFazio (D-OR), Ranking Member Sam Graves (R-MO), Subcommittee on Economic Development, Public Buildings, and Emergency Management Chair Dina Titus (D-NV), and Ranking Member Daniel Webster (R-FL) sent a letter to FEMA requesting information on why approvals for assistance under the Individuals and Households Program (IHP) is only 13 percent so far this year. The letter recommends FEMA follow the GAO's 2020 report findings that FEMA should make several changes to its processes, forms, and staff trainings to make IHP assistance more accessible to eligible disaster survivors. The Members requested FEMA answer several questions to allow Congress to better understand how it can address these problems. Read the letter's [full text here](#).

♦ **FEMA Budget Includes "Strategic Context"** ♦

If you have not had the chance to read through NEMA staff's review of emergency management priorities in the presidential budget, you can [find it here](#). As part of this year's budget, FEMA included a "strategic context" section, which is a foray into quantifying the outputs of specific agency activities. These performance measures may be useful for preparing for the types of information FEMA could request from states in the future.

The performance measures cover approximately 13 pages and cover issues including: education, training, and exercises; grants; mitigation; the National Flood Insurance Fund; preparedness and protection; regional operations; and response and recovery. An example of these is measuring the percent of capability building Homeland Security Grant Program (HSGP) projects that align to closing state, territory, and urban area capability gaps, with a goal of 89% of projects aligning to current capability gaps as outlined in the Stakeholder Preparedness Review (SPR) by FY22. Some other notable performance measures relate to the percent of prime grant awards closed within 365 calendar days of the end date of the Period of Performance, building code adoption, total national investment in mitigation (\$3.96 billion in FY22), and average timelines of individual assistance awards. [The strategic context is available here](#).

♦ **Katko Introduces Preliminary Disaster Assessment Legislation** ♦

Over the summer, Representative John Katko (R-NY), reintroduced legislation to improve preliminary disaster assessments (PDAs). The legislation was originally introduced last Congress, but with NEMA and several other associations' input has been modified to focus on establishing an advisory panel consisting of SLTT emergency management personnel and their representative organizations, which will support FEMA in its efforts to improve the PDA process. The panel will consider establishing a training regime to ensure consistent review, utilizing a common technology platform to integrate SLTT and FEMA data, reviewing FEMA instruction materials to ensure all language is appropriate to current rules and laws, and identifying opportunities for streamlining PDA consideration. FEMA will

submit a report to Congress about the panel's findings and efforts being made to implement recommendations. NEMA's Response and Recovery Committee Public Assistance/Individual Assistance Subcommittee and Legislative Committee reviewed the text at various stages of development. NEMA has expressed its support of the legislation, along with the International Association of Emergency Managers (IAEM) and the American Flood Coalition (AFC). View the [legislation here](#).

♦ **House Approves Legislation Preventing Deobligation of Disaster Aid Applied for in Good Faith** ♦

The House passed H.R. 539, the Preventing Disaster Revictimization Act, sponsored by Representative Sam Graves (R-MO), with several co-sponsors. The legislation requires FEMA to waive the debt of Individual Assistance recipients when the agency later determined it mistakenly granted assistance, but no fraud was committed, and if repayment of such debt could be construed as a hardship. FEMA must also report to Congress on actions it will take to reduce the error rate for providing assistance, the internal processes used to make decisions regarding the distribution of individual and household assistance programs, and any changes made to these processes. NEMA's Response & Recovery and Legislative Committees reviewed it with generally supportive feedback. The bill has now moved to consideration by the Senate via the Homeland Security & Governmental Affairs Committee. [Read the legislation here](#).

♦ **New Appointees Announced for the Council of Governors** ♦

President Biden appointed Delaware Governor John Carney, Louisiana Governor John Bel Edwards, Michigan Governor Gretchen Whitmer, Oregon Governor Kate Brown, Utah Governor Spencer Cox, Vermont Governor Phil Scott, and Wyoming Governor Mark Gordon to the Council of Governors. The President reappointed Ohio Governor Mike DeWine and will co-chair with Minnesota Governor Tim Walz. Tennessee Governor Bill Lee remains on the Council. The Council is a bipartisan body of 10 governors that work with the Administration on issues affecting national security, homeland defense, cybersecurity, disaster response and recovery, and the National Guard. Over the years, NEMA has worked closely with the National Governors Association and the Council in developing disaster policy, reimbursement strategies for the National Guard, and cybersecurity efforts. Our involvement has continued to strengthen our relationship with NGA and the Council. More information is [available here](#).

♦ **U.S. DOC-EDA \$3 Billion in Funding for Community Economic Development** ♦

The Economic Development Administration at the U.S. Department of Commerce announced \$3 billion in funding from the American Rescue Plan to assist communities nationwide in building back better from COVID-19 by accelerating the economic recovery and strengthening local economies to be more resilient to future economic shocks. Economic development planning or implementation projects can include projects that help address the climate crisis including through the development and implementation of green products, green processes, green places and green buildings. More information is [available here](#).

♦ **Senate HSGAC Releases Updated Report on Federal Cybersecurity** ♦

The Senate Committee on Homeland Security & Governmental Affairs (HSGAC) Permanent Subcommittee on Investigations issued a report in 2019, Federal Cybersecurity: America's Data at Risk. The report documented that none of the eight key federal agencies assessed met basic cybersecurity standards and protocols, including protecting PII. In the updated report, only DHS improved to an effective cybersecurity regime. The other seven made only minimal improvements. The information was gathered via inspectors general reports over the past 13 years. The report did find that all eight agencies (DHS included) utilized legacy systems or applications that are no longer supported by the vendor with security updates. [Read the report here](#).

This summary is provided courtesy of the NEMA Legislative Committee. Should you have any questions, please feel free to contact NEMA Deputy Director, Matt Cowles at 202-624-5459 or mcowles@csg.org or Policy Analyst Jamie Logan at 202-624-5458 or jlogan@csg.org