

6-1-2010

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Robert Montjoy
University of New Orleans

Monica Farris
University of New Orleans

Joel Devalcourt
University of New Orleans

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Recommended Citation

Montjoy, Robert; Farris, Monica; and Devalcourt, Joel, "Achieving Successful Long-Term Recovery and Safety from a Catastrophe: Recommendations for Public Assistance" (2010). *CHART Publications*. Paper 4.
http://scholarworks.uno.edu/chart_pubs/4

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Achieving Successful Long-Term Recovery and Safety from a Catastrophe

RECOMMENDATIONS FOR PUBLIC ASSISTANCE

The University of New Orleans

Robert Montjoy, PhD
Research Professor of Public Administration
E-mail: rmontjoy@uno.edu

Monica Farris, PhD
Acting Director, UNO-CHART

Joel Devalcourt
Graduate Research Assistant
UNO-CHART



Research support from the Ford Foundation, Government Performance
and Accountability in the Governance and Civil Society Unit

Recommendations for Public Assistance

Robert Montjoy, Monica Farris, and Joel Devalcourt

We must also look at ways to speed up the infusion of eligible public assistance funding to communities, which can be financially devastated and thus unable to commence critical infrastructure repair projects without up-front funding. Spurring timely recovery at the community level will send a powerful message of hope to community disaster survivors, as well as create jobs that may prove crucial in keeping many residents in those communities. I firmly believe that we can make our public assistance program less process-oriented and more outcome-driven, and we are working toward exactly that. Craig Fugate (2009)

There have been numerous complaints, testimonies, studies, reports and recommendations regarding problems with the Public Assistance (PA) program after Hurricanes Katrina and Rita. Congress has addressed some of them as part of the Post Katrina Emergency Management Reform Act (PKEMRA) and continues to monitor progress in FEMA and in the field. Our report today draws upon the existing literature and our own investigations in Louisiana and Mississippi to reach a series of findings about the nature of aid needed in catastrophes and to offer recommendations.

Findings

- ***Catastrophes are different.*** The scope of damage in Katrina/Rita, the horrors experienced by those stranded in the immediate aftermath, and the agonizingly slow recovery show that catastrophes on this scale are different from “normal” disasters and that they require different forms of assistance.
- ***Delay is deadly.*** Where the scope of a disaster is so broad that there are no viable alternatives for vital public services, such as schools, people will not return and recovery will be jeopardized. Temporary facilities allow critical services to resume, and visible action on permanent facilities gives community members a basis for making their own decisions. The issue is not how many Project Worksheet (PW) versions can be processed but how many facilities are put back into use and how soon.
- ***Response capacity should be scalable, insofar as practical.*** The planning and capacity building necessary for the (PA) program to operate effectively in catastrophes creates assets that can be used, as needed, in any level of disaster. This is the concept of a scalable response capability that is included in the draft National Disaster Recovery Framework (NDRF).
- ***There should be a trigger or threshold required for the activation of special catastrophic procedures.*** By their nature catastrophes are rare and unpredictable so that it is difficult to create a generic definition. PKEMRA defines catastrophes in broad terms based on the scope of damage and extent of disruption, but there is no clear trigger to activate special provisions.

- ***Pre-disaster preparation is essential for speedy recovery.*** All levels of government were unprepared for Katrina/Rita. Subsequent efforts at disaster preparation have focused primarily on the response phase, as they should, but it is clear now that the recovery phase also requires thorough preparation.
- ***Preparation must be intergovernmental.*** PA is designed to be intergovernmental. For it to operate with a minimum of confusion, disagreement, and delay, the preparation must also be intergovernmental. Building capacity in the parts is not sufficient; the interaction of the parts must be practiced, as well. To this end, FEMA must listen to and lead other participants.
- ***Building back better is both cost-effective and beneficial.*** Mitigation is essential to reduce the risk of future damage and expense. Catastrophes create opportunities for smarter use of facilities that can improve the quality of life in communities.

Recommendations

1. Outcome Orientation. Recovery from a catastrophe is more like fighting a battle, in which the need for decisive action in the field outweighs the goal of procedural conformity, than it is like running a peacetime bureaucracy. FEMA struggled with rules that did not fit situations and procedures that required multiple levels of approval. The gain in procedural conformity and possible savings in the prevention of fraud, waste, and abuse must be weighed against the enormous cost in human suffering and reduced economic output caused by delayed recovery. FEMA and Congress have made progress in the revision of many policies and procedures, but the unpredictability of catastrophes means that rules designed to fit that last one may not fit the next.

Recommendation #1a: Design a trigger or threshold for the declaration of a catastrophe.

Discussion: We recommend that Congress define more precisely how a catastrophic declaration can be activated. The PKEMRA definition is vague, leaving a great deal of discretion to the Administration and leading to pressures for overuse and inconsistencies over time. There should be one or more triggers or thresholds based on observations, such as fifty percent damage and fifty percent evacuation over a broad area. The difference between a trigger and a threshold is that the former would automatically produce a declaration whereas the later would simply open the possibility of a declaration, still allowing considerable discretion. Designing an appropriate trigger would be a challenge because no one can foresee the variety of events that might warrant catastrophic designation. For this reason a threshold might strike a better balance between the desire for clear rules and the need for judgment.

Recommendation #1b: Use forward funding and a forgivable loan program to make federal aid available in a form that is easy to access quickly.

Discussion: PA is a reimbursement program that requires a non-federal match. Both features restrict the ability of devastated communities to start projects. The federal government eventually assumed 100 percent of eligible costs after Katrina/Rita, but only after years of delay and uncertainty. The Conference of Mayors recommends a 100 percent federal share upon the declaration of a catastrophe. This approach would solve the match problem, but not the need for advance funding. Further, a declaration of 100 percent federal share removes incentives for applicants to exercise restraint. A loan that can be used as match and later forgiven under certain conditions allows quick starts for approved projects and later review as more information becomes available. The Community Disaster Loan (CDL) program is a promising vehicle, but it would have to be revised to serve this broader purpose. We suggest the following actions based on the declaration of a catastrophe.

- Advance 50 percent of the cost estimate for approved projects
- For insured properties, do not delay grants or withhold the estimated amount of the settlement from PA grants pending resolution. Recover the amount of any insurance payments from applicants and sub-applicants after the fact.
- Remove the cap from the Community Disaster Loan (CDL) program
- Allow the use of CDL as non-federal match

Recommendation #1c: Push decision making down the hierarchy by raising the cap on small projects to reduce the levels of review.

Discussion: The U.S. Conference of Mayors recommends a cap of \$100,000. The exact amount could be decided after a study of the numbers and nature of actual cases falling within various cost estimates. While it may be appropriate to raise the cap for all disasters, there is certainly justification for a higher cap in catastrophes. The greater scope of damage means that large numbers of cases can clog the review system. Catastrophic circumstances should shift the balance between speed of action and prevention of errors toward the former. This step would have to be accompanied by better training for field personnel as outlined below.

Recommendation #1d: Continue to strengthen regional offices.

Discussion: A 2009 report by the National Academy of Public Administration (NAPA) found that FEMA had made progress toward achieving “robust” regional offices but that additional action was needed to build capacity. We support this recommendation as another means of both integrating planning with stakeholders and speeding decisions after a disaster.

Recommendation #1e: Enable and require the federal government to take responsibility for its decisions in the PA program.

Discussion: De-obligation of funds can leave states and communities holding the bag on projects that have already been started. The Government Accountability Office (GAO) and the Department of Homeland Security's Office of Inspector General (DHS-OIG) noted this problem. It should be accepted that in a crisis, as in battle, there will be errors, or simply different conclusions about appropriate actions. The remedy should not be to punish the victims. There should be clear rules about who can make commitments for FEMA and how they can do so, but commitments once made should not be reversed except in cases of fraud.

Recommendation #1f: Record and report performance measures based on outcomes and customer satisfaction.

Discussion: In a 2009 review of the PA program DHS-OIG found that FEMA had adopted four appropriate performance measures in accordance with the Government Performance and Results Act of 1993, but the OIG then criticized the agency for only tracking the first two, both of which are based on the obligation of funding within certain time periods. Obligation of funding is a process measure and does not necessarily indicate that applicants have agreed with FEMA decisions or that work has commenced. In the spring of 2010 there were 3,242 unresolved project worksheet versions in Louisiana. DHS-OIG found that a third performance measure, one based on closure rates, had not been implemented because the existing database did not record the information. A new system, Emergency Management Mission Integrated Environment (EMMIE), is designed to capture the needed information. A fourth measure, based on customer satisfaction, had not been reported because data collection was suspended pending approval of the survey. Aggressive implementation of these last two measures can help make the shift from process orientation toward action and outcome, as Administrator Fugate pledged.

2. Human Resources. In a catastrophe there will be large numbers of damaged facilities that require assessment and project worksheets (PWs). Human resources were simply inadequate to manage the load after Katrina/Rita: there were too few people with too little training and experience and too little time on the job before rotations. DHS-OIG attributed most of the problems following that catastrophe to human resource issues. FEMA has since made progress in creating a credentialing program and building a surge force as directed by PKEMRA. However, recent reports by DHS-OIG and the National Academy of Public Administration found that FEMA had a long way to go in creating and implementing a Strategic Human Capital Plan (SHCP) as required by PKEMRA. Further, FEMA provides only a part of the human resources needed to manage the PA program. A broader perspective is needed.

Recommendation #2a: Fully implement the mandate from PKEMRA for a Strategic Human Capital Plan (SHCP).

Discussion: Without such a plan it is impossible to evaluate the adequacy of existing preparations because the goals and assumptions regarding human resource needs are not explicit.

Recommendation #2b: Congress should provide the necessary support to ensure that FEMA's human resource capacity is adequate for catastrophic disasters.

Discussion: The principal support will be in the form of funding once the plans for staffing and training are completed, but policy changes may be necessary to assist in the recruitment and maintenance of the Surge Capacity Force as outlined in GAO-09-59R.

Recommendation #2c: Make training and mission readiness assessment for the PA program truly intergovernmental.

Discussion:

While DHS-OIG and FEMA can be criticized at times for unreasonable application of the regulations, many of the problems resulting in de-obligation stem from the need of the applicant to better understand the requirements of the federal regulations which govern the Public Assistance Program (Louisiana Governor's Office of Homeland Security and Emergency Preparedness).

If the PA is to be successful as an intergovernmental program, the training must be intergovernmental. There needs to be a shared understanding of the rules and their application. Given the challenges FEMA has experienced in meeting the SCHP requirement, it may seem overly ambitious to suggest that it take on leadership in building an intergovernmental cadre of trained personnel; PKMERA's mandate for increased human resource capacity focuses only on the needs of FEMA. Yet it is difficult to imagine how FEMA can plan its own human capital without taking into account the capacities at other levels. Shared training is one means of gaining such knowledge. Further, inclusion of likely applicants and sub-applicants, as well as contractors, in training will not only reduce confusion and disagreement after a disaster, but can also improve the training, itself, by introducing different perspectives and questions. Such a goal implies more than allowing selective representatives in classes: it requires proactive programs to encourage shared training at all levels.

Recommendation #2d: Explore the possibility of creating a national certification program for private companies that assist in disaster management.

As noted above, it is not cost-effective for communities to maintain sufficient staff to handle the large numbers of PA applications necessary after a catastrophe. It is not just a matter of making applications, appeals, and/or revisions, as time consuming as those tasks may be; it is also matter of contracting for the work to be performed, monitoring the performance and doing so in a way that satisfies federal standards. Disaster management firms can be of great assistance to communities, but

communities must first contract with these firms, about which they usually know very little, for services with which they not familiar, and in time frames that provide little opportunity for due diligence. There have been a number of complaints about terms and performance. National certification would help communities to screen firms and would give firms a performance incentive to maintain certification. Standard contracts would also help communities avoid mistakes and reduce negotiation time.

3. Community Preparation. An important lesson from Katrina is that the recovery phase of disaster management requires thorough pre-disaster preparation, much as the response phase does. Most of that preparation must take place at the community level. FEMA cannot force communities to prepare, but it can encourage and assist them. Its role should be to provide technical assistance, measure progress, and incentivize participation.

Recommendation #3a: Provide information and technical assistance in community preparation.

Discussion: Lessons learned from Katrina and other disasters should help communities prepare for disasters. At a minimum, a report on useful preparatory actions would give communities a check list to consider. Examples relevant to the PA program include: pre-disaster documentation, advance contracting, assessment of potential debris and identification of appropriate disposal sites, evaluation of ordinances regarding access to private property, adoption of uniform building codes and standards, and strategic planning that could guide rebuilding decisions. Documents and training aids would not necessarily be limited to PA. They would be more useful as part of more general guidance on preparation for recovery. A more ambitious goal would be the inclusion of preparation for recovery in an intergovernmental training program as outlined above.

Recommendation #3b: Create a program to rate community preparation.

Discussion: Such a program could be patterned after the Community Rating System (CRS) for the National Flood Insurance Program. The CRS is voluntary, and a rating system for recovery preparation would have to be as well. Therefore, there should be incentives for participation.

Recommendation #3c: Incentivize participation in the rating system by grants and/or the commitment of a higher federal share after a disaster.

Discussion: There are a number of ways to provide incentives. One would be the awarding of extra points for relevant competitive grants programs. Another would be the commitment of a higher federal share (e.g. an additional 5 percentage points) for the PA program after a disaster. The commitment of a higher federal share might not affect recovery from a catastrophe if the share is placed at 100 percent or if forgivable loans are used to fill the gap. However, the commitment would still affect non-catastrophic disasters, which are much more likely occurrences, so the incentive could still have an

effect. A more effective and ambitious incentive would be to develop an insurance program for PA as outlined below.

Recommendation #3d: Conduct studies to assess the requirements, advantages, and disadvantages of establishing a federal insurance program and requiring participation in it as part of the PA program.

Discussion: In principle, insurance has many advantages over a grant program. Potential beneficiaries help to pay the costs. Differential rates can be used to reward preparation and mitigation, as the CRS does for the NFIP. Increases or decreases in yearly rates provide more immediate incentives for communities to take desired actions than does the promise of a greater federal share in the event of a disaster. Insurance contracts can also require periodic assessment of property values. There are, of course, many problems in making a sound program for disasters, as the experience of the NFIP demonstrates. It should be possible, however, to design a program that places the federal government at no greater liability than it has now under the PA program.

4. Initial Estimates of Scope and Cost. Initial estimates are very important because they are the basis for agreement, or disagreement, on PWs and they set caps for alternative and improved projects. There were many complaints that initial estimates after Katrina/Rita were systematically low, leading to appeals and delays. All parties recognize that estimation is difficult, partially because of the difficulty in distinguishing disaster-related damage from pre-disaster conditions. Critics also argued that cost estimation procedures were not used properly or were not appropriate for a catastrophe because of changed market conditions. Efforts to reduce the range of uncertainty in initial cost estimates could yield substantial benefits in the speed of recovery.

Recommendation #4a: Regularly evaluate cost estimation procedures.

Discussion: FEMA has used an expert panel to improve cost estimation procedures, but there appears to be no regularly produced data comparing initial estimates and final costs. While comparisons would not be valid in all cases, such as improved projects, there should still be plenty of cases to use in assessing the accuracy of initial estimates under a variety of conditions. The argument that a catastrophe significantly affects market conditions could be tested using data from Katrina/Rita, for example.

Recommendation #4b: Ensure adequate training for personnel who will be engaged in cost estimation.

Discussion: This is part of the human resource recommendation above. Technical specialists need to understand FEMA rules as well as their own areas of expertise.

Recommendation #4c: Change training and reporting procedures to reduce the use of “0” or unrealistically low estimates in PWs.

Discussion: After Katrina/Rita there were numerous reports of PWs being initiated with unrealistically low estimates just to get them started. As a result, many projects went through multiple versions, as the GAO noted. The practice can lead to delays as applicants appeal decisions, especially when the estimate sets a cap for future work. While changes to initial scope and cost estimates will be necessary in many cases because of new information, e.g. additional damage discovered during repair, the goal should be to minimize versioning. It not only delays action but also adds to the workload of already overburdened staff at all levels.

Recommendation #4d: Encourage pre-disaster documentation of conditions by publishing examples and standards.

Discussion: In Congressional testimony PA director James Walke described the task of distinguishing disaster-related damage, which is eligible for assistance, from pre-disaster condition, which is not, as one of the major challenges that FEMA faced. This problem could be reduced with better pre-disaster documentation. After Katrina/Rita, GAO noted that FEMA had much less difficulty estimating storm damage to roads in Jefferson Parish, which had records of pre-disaster conditions, than in New Orleans, which did not. On the other hand, Jackson Barracks reported that it had extensive pre-disaster documentation, but that it was not accepted by FEMA. FEMA could encourage pre-disaster documentation and reduce post-disaster disagreement by setting and publishing standards indicating what it would accept.

5. PW Review and Approval. After Katrina/Rita there were complaints of lost documents, inability to track PWs, inconsistency of decisions, insufficient information on denials, and lack of an independent appeals process. Much of the problem can be related to insufficient numbers of trained personnel, a problem we addressed above. But other changes could help as well.

Recommendation #5a: Implement a tracking system for PWs.

Discussion: The EMMIE system that is coming on line would appear to meet this need.

Recommendation #5b: Require FEMA to give reasons for denials in writing and tell applicants of any documentation needed.

Discussion: This would seem to be a basic requirement of transparency.

Recommendation #5c: Create an independent appeal process for large projects.

Discussion: An amendment, initiated by Senator Landrieu, to the American Recovery and Reinvestment Act of 2009 required an independent review process for Katrina/Rita cases valued at more than \$500,000, but it applied only to those disasters. In a December 2009 report DHS-OIG (10-26) recommended that FEMA remedy this problem by establishing “an agency-wide mediation process for appeals that have reached impasse.” FEMA responded, “there is no opportunity for an impasse to occur once an applicant submits an appeal under the provisions of Title 44 CFR §206.206” (p, 26). This may be a matter of semantics, but the case of Charity Hospital in New Orleans was certainly at a stand-still until the review board appointed under the Landrieu amendment ruled in favor of the applicant for \$462 million instead of FEMA’s final offer of \$150 million. The difference is enormous and the decision will have significant impacts on the future of New Orleans. Although we feel that better training and other efforts to improve the accuracy of initial estimates can reduce the incidence of such problems in the future, there still needs to be a mechanism for resolving disputes beyond simply accepting FEMA’s conclusions.

6. Building Back Better. While the rules and procedures of the PA program after Katrina/Rita emphasized restoring facilities to their pre-disaster condition, FEMA made changes during reconstruction and the newly released draft of the National Disaster Recovery Framework reflects a shift toward building back better. This is an important development because disasters, particularly catastrophes, provide opportunities for significant improvements in communities. Part of the goal should be to reduce the risk of future damage and expense. Specific recommendations are contained in the mitigation section of this report. Another part of the goal is recognizing changed needs, conditions, and opportunities. FEMA has done that by allowing consolidation of like projects. We support this action.