

The seal of the State of Louisiana is faintly visible in the background. It features a central figure holding a scale and a sword, surrounded by the text "STATE OF LOUISIANA" at the top, "UNION JUSTICE" on the sides, and "CONFIDENCE" at the bottom. The year "1804" is at the very bottom.

# CONGRESSIONAL TESTIMONY

December 4, 2012

*before the*

---

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE**

*on*

**“CATASTROPHIC RECOVERY”**

---

*by*

KEVIN DAVIS  
DIRECTOR

**GOVERNOR'S OFFICE**



**HOMELAND SECURITY &  
EMERGENCY PREPAREDNESS**

7667 INDEPENDENCE BOULEVARD  
BATON ROUGE, LOUISIANA 70806  
(225) 925-7701

**This page is intentionally left blank.**

1

2 **INTRODUCTION**

3 In the June 2012 issue of the *Kiplinger Newsletter*, Louisiana had the dubious  
4 distinction of being named the “*most disaster-prone state in the Union.*”

5 Louisiana is currently managing the recovery from nine (9) Presidentially declared  
6 major disasters since Hurricanes Katrina and Rita struck in 2005. These nine (9) do  
7 not include the BP Oil Spill in 2010, and numerous other emergency events that did  
8 not meet the threshold of a *Stafford Act* event.

9 Hurricane Katrina in 2005, by any measurable standard, delivered catastrophic  
10 damage to the State and the entire Gulf Coast. Hurricane Katrina has been  
11 determined to be the most damaging disaster in FEMA history. Prior to Hurricane  
12 Sandy, the damage from Hurricane Katrina was four (4) times greater than the next  
13 largest disaster. Combined with Hurricane Rita, which struck Louisiana less than  
14 thirty (30) days later, these two (2) events caused more damage than the remaining  
15 top ten (10) disasters combined.

16 Hurricanes Gustav and Ike (which barely missed the top ten [10] list) struck  
17 Louisiana three (3) years later. Louisiana is now recovering from the collective  
18 damages of four (4) of the worst disasters in recorded history. The challenges keep



19 coming. Louisiana was hit again by Hurricane Isaac earlier this year, another major  
20 storm that seriously impacted communities across the State.

21 As a result of those events, Louisiana has **a lot of** experience in catastrophic  
22 recovery. We think of Louisiana as the largest living laboratory for recovery in the  
23 Nation. You will hear recurring themes throughout our remarks: Size of the disaster  
24 changes disaster-assistance delivery significantly; time is critical; the FEMA Public  
25 Assistant (PA) program is complex and not conducive to a rapid recovery; policy and  
26 processes are inconsistent in their implementation and inconsistent with *Stafford Act*  
27 language and intent; capacity – organizational, funding and human resources – for  
28 recovery from catastrophic events is limited at all levels, but especially at the  
29 local level.

30 On behalf of the State of Louisiana, I would like to thank this Committee for the  
31 opportunity to discuss our experiences with the disaster recovery programs made  
32 possible through the *Robert T. Stafford Disaster Relief and Emergency Assistance*  
33 *Act (Stafford Act)*. Thank you Chairman Mica, Ranking Member Rahall and  
34 distinguished members of the Committee for taking an interest in, and providing  
35 leadership, for this very vital discussion.

36 I am Kevin Davis, the Director of the Louisiana Governor's Office of Homeland  
37 Security and Emergency Preparedness (GOHSEP), the lead agency in Louisiana for



38 recovery. I also serve as the Governor's Authorized Representative under the  
39 *Stafford Act* relative to the open disaster declarations in Louisiana.

40 Unless one has personally experienced a catastrophic disaster, it is not possible to  
41 fathom the depth and breadth of the devastation that can occur. For example, all 117  
42 public school campuses in the City of New Orleans were damaged or destroyed  
43 during Katrina and will require an estimated **\$2.6 billion** to restore. The Louisiana  
44 Office of Facility Planning and Control (FP&C) is responsible for **\$1.4 billion** repairs  
45 or replacements of thousands of disaster-damaged facilities including hospitals,  
46 libraries and college campuses in Louisiana. More than 25,000 homes and business  
47 were destroyed in a five (5)-parish area alone during Katrina. More than 1.4 million  
48 Louisiana citizens were either temporarily or permanently displaced. Only one (1)  
49 building remained standing in Cameron Parish in the wake of Hurricane Rita. The list  
50 goes on . . .

51 Today, Louisiana is managing more than **\$14.5 billion** in current recovery grant  
52 funds in the FEMA PA and Hazard Mitigation (HM) programs as a result of *Stafford*  
53 *Act* events.

54 To put our recovery into context, the national average for FEMA PA funding per  
55 major disaster is approximately **\$60 million**. The **\$14.5 billion** of disaster relief  
56 funding Louisiana is managing represents more than **1,700 Applicants** and **32,523**



57 projects that rely on FEMA PA supplemental support for repairs to  
58 damaged property.

59 We believe as a result of our recent and ongoing catastrophic recovery experiences,  
60 Louisiana has a unique perspective on what works, what does not work and what  
61 can be done to improve the delivery of Federal disaster assistance. While any size  
62 disaster is catastrophic to those directly impacted by it, what we have learned is that  
63 there are significant differences in effectively delivering assistance to those  
64 recovering from a disaster with smaller impacts and one of catastrophic proportions.  
65 What works in a disaster with a smaller footprint, does not work as well, or  
66 sometimes at all, in recovering from disasters with larger footprints. In a catastrophic  
67 disaster resources in both the private and public sectors at the local, State and  
68 Federal levels are stretched beyond capacity; cash flow to begin the recovery while  
69 waiting on Federal assistance is nonexistent; demographic shifts are significant;  
70 decision-making models are different; and risks are greater. For example, in the  
71 smaller disaster a local government can “float” some level of cash flow by moving  
72 monies around within their existing budgets, so that construction on damaged  
73 facilities can begin while eligible work and scope alignments between the Applicant  
74 and FEMA are being worked out. However, in a catastrophic event when revenue  
75 streams are seriously compromised for long periods of time and damages are in the  
76 billions of dollars, state and local governments do not have the resources to finance



77 the start of recovery and state laws prohibit beginning projects until all funding  
78 sources are identified.

79 To say the current process for delivering the FEMA PA program delays catastrophic  
80 recovery is an understatement. The fact is, there is no recovery until the issues in  
81 Federal assistance delivery are resolved and as we will demonstrate, under the  
82 current process it will take years to do it.

83 It is important to restore normalcy as quickly as possible after any disaster,  
84 especially a catastrophic one. Delayed recoveries take an emotional toll on impacted  
85 citizenry, increase the cost of temporary measures and administrative cost, and  
86 reduce the chances of implementing mitigation measures before a next event.

87 Leadership at all levels of government is frustrated.

88 The challenges of timely identifying and agreeing on eligible work and getting  
89 financing lined up quickly are not unique to Louisiana. What we have experienced,  
90 others will experience anywhere in the Nation where a catastrophic event occurs.

91 New York, New Jersey and other impacted states will experience the same  
92 challenges as they recover from Hurricane Sandy. We stand ready to offer our  
93 knowledge and experience to assist them in any way that we can.

94 There are some who think the Louisiana recovery is taking too long. We could not  
95 agree more. We hear there is "Katrina fatigue" in Washington. Believe me when I tell



96 you that no one is more fatigued than Louisiana citizens and leaders who, **seven (7)**  
97 **plus years** after Katrina, are still struggling to get eligible work agreed to by FEMA.

98 There are others who believe Louisiana is constantly looking for a never-ending  
99 handout and will never stop asking for money. The truth is: We are looking for full  
100 recovery and that requires additional funding. Local funding has long since been  
101 exhausted and there is still a need for assistance if we are to rebuild our schools, fire  
102 stations, hospitals, jails and police stations.

103 As any community recovering from disaster, we are looking for funding for work that  
104 is indisputably eligible for Federal assistance. The fact that we are looking for it more  
105 than **seven (7) years** later is a powerful testament to the inefficiencies within the  
106 bureaucracy of disaster assistance delivery.

107 Currently, there is considerable conversation among recovery professionals in both  
108 the public and private sectors that Federal recovery assistance needs to be  
109 rethought. We agree. That is why we are before you today. We want to share our  
110 experiences with you as together we try to rebuild a recovery structure that is truly  
111 responsive to those in greatest need.

112 Let me be quick to say: FEMA is a good partner. However, it is our experience that  
113 the regulatory process and its implementation is – unnecessarily – highly  
114 bureaucratic and cumbersome, seriously complicating a community's recovery from



115 a disastrous event. And, through inconsistent policy application and subjective  
116 interpretations in the field, the process is not always true to the intent and specific  
117 language found in the *Stafford Act*. Our experience has been that current FEMA  
118 implementation of the *Stafford Act* does not allow for the type of recovery support  
119 necessary when entire communities are devastated by catastrophic events.

120 What is interesting about the *Stafford Act* is that it provides the FEMA Administrator  
121 a broad base of authority to support recovery after a disaster. That authority is  
122 somewhat dampened by regulation, and regulation is then broadened or limited by  
123 policy and subjective decision making by field staff. Decision making is often  
124 inconsistent from project-to-project, Applicant-to-Applicant, disaster-to-disaster,  
125 state-to-state, region-to-region, and even between FEMA Regions and  
126 Headquarters (HQ).

127 The average FEMA disaster over the past twenty (20) years is about **\$60 million** in  
128 funding under the FEMA PA program. The definition of a catastrophic event depends  
129 on the community. A significant difference between a catastrophic and non-  
130 catastrophic “average” or “garden-variety” disaster is that, in a non-catastrophic  
131 event, the recovery is the repair of limited infrastructure where, in a catastrophic  
132 disaster, the damages are major and may impact a large portion or perhaps all of a  
133 community’s essential public infrastructure. The recovery process from a  
134 catastrophic event must include a holistic planning approach to address broad



135 community needs – including changing needs as a result of the disaster – as  
136 opposed to simply point-repair/replacement of individual structures. It is the  
137 difference between building back a fire station or the strategic plan for restoring an  
138 entire fire department because all fire stations were damaged or destroyed. It is the  
139 difference between building back a single school *building* or the restoration of an  
140 entire school *system*. The *Stafford Act* must allow and the responsible Federal  
141 agencies must be prepared to engage in the full spectrum of community planning  
142 and capacity building that is necessary to fully recover a community that has been  
143 totally devastated by a catastrophic event.

144 We know through the development of the newly released *National Disaster*  
145 *Recovery Framework* (NDRF) and the creation of Recovery Support Functions  
146 (RSFs) – one of which is the Community Planning and Capacity Building (CPCB)  
147 RSF – that Federal leadership recognizes the need for a more holistic approach to  
148 recovery from a catastrophic event. That is a start; much more is needed.

149 FEMA Administrator Craig Fugate once told us that he wanted his staff not to focus  
150 on the piece of paper they are processing but instead to focus on how that piece of  
151 paper contributes to the recovery of the school or the fire station or the hospital and  
152 the community. The well-established bureaucratic processes that require a very  
153 detailed assessment of damages and a painstaking determination of eligible work  
154 inhibits FEMA PA staff to readily adopt Mr. Fugate's philosophy.



155 Consider . . .

- 156 • FEMA's current approach to implementation of *Stafford Act* recovery  
157 programs, especially the FEMA PA program, is focused on a time-consuming,  
158 micro-analysis of damaged facilities, door knob-by-door knob, desk-by-desk,  
159 ceiling tile-by-ceiling tile. Eligibility is then evaluated for each of these items  
160 on a proof-beyond-a-reasonable-doubt standard. This micro-approach needs  
161 be replaced with a higher-level view of what it will take to recover a facility,  
162 an Applicant or a community so that we **quickly** return to some sense  
163 of normality.
- 164 • The complexity of the process is compounded in a long recovery by the  
165 constant turnover of staff and the lack of qualified personnel. For example, a  
166 decision is made by one FEMA employee who demobilizes, and the  
167 replacement employee reverses the decision made by the first employee.  
168 Additionally, we have FEMA individuals with some "experience" arguing  
169 technical repair requirements with an Applicant's licensed professional  
170 engineers and architects.
- 171 • Federal PA support is accessed through the development of a Project  
172 Worksheet (PW), which is submitted by Applicants to FEMA for approval of  
173 eligible scope of work (SOW), followed by the obligation of funding. Since  
174 Hurricanes Katrina and Rita in 2005, Louisiana has averaged an increase in



175 obligated dollars of over **\$1.6 billion per year**. We still have **1,138** PWs that  
176 need amending by FEMA to capture remaining eligible work.

177 The good news is that as additional eligible work is accepted by FEMA,  
178 obligated dollar amounts increase, providing critical additional resources  
179 needed by communities to advance their recoveries. The bad news is that we  
180 are seven plus years into the recovery and are still struggling with FEMA to  
181 gain consensus on eligible work. From a recovering Applicant's perspective,  
182 they have had to wait **more than seven (7) years** to realize what funding is  
183 available for their recovery. This matters because communities cannot begin  
184 to rebuild facilities until funding is identified and in place.

185 • In late 2007, when total FEMA PA obligations had just reached **\$4 billion**, the  
186 senior FEMA leadership told us that eligible damages in Louisiana under the  
187 FEMA PA program would not exceed \$6 billion for Hurricanes Katrina and  
188 Rita. Today, we are **over \$11 billion** in obligated funding. We continue to  
189 struggle to have all eligible damages recognized by FEMA – estimating an  
190 additional **\$1.5 billion** will be added once remaining eligible work is agreed  
191 upon. What is surprising to those not directly involved, and agonizing to  
192 recovering communities, is that more than **seven (7) years** after Hurricanes  
193 Katrina and Rita we are *still* debating eligible work – square foot-by-  
194 square foot.



195 • Counting amendments to the 32,527 projects identified in Louisiana's  
196 recovery, there are **nearly 71,000** PWs currently in the system. In the last  
197 twelve (12) months alone, there have been **2,710** PWs written or amended for  
198 an increase in obligated dollars of over **\$600 million**.

199 The time it takes to agree on eligible work is too long and too costly. The paperwork  
200 required to process through recovery is beyond burdensome; the process itself is  
201 unmanageable and overwhelming – especially to communities that are already  
202 overwhelmed by disaster. Policy issues that are meant to enhance an Applicant's  
203 recovery instead are used to restrict the application of the *Stafford Act*. The  
204 decisions of people with operational authority are too subjective and sometimes  
205 reflect personal values not supported in statute or regulation.

206 The foregoing view of the *Stafford Act* recovery process is sufficient in and of itself to  
207 conclude that, as it is currently managed, the Federal PA program does not and  
208 cannot support recovery from a catastrophic event.

## 209 **EXAMPLES**

### 210 ***Charity Hospital***

211 To date, one of the most notable examples of the most contentious discussions  
212 regarding recovery is the dispute between the State and FEMA over the eligible  
213 damage to Charity Hospital in New Orleans.



214 Charity was an accredited and functioning Level 1 Trauma Center, medical patient  
215 care/critical care facility and teaching hospital. It was severely damaged in the wake  
216 of Hurricane Katrina.

217 To briefly recap their situation:

- 218 • FEMA and the State disagreed on the level of damage to Charity Hospital.
- 219 • After the storm, Louisiana engaged three (3) separate and independent  
220 groups of highly qualified architectural, engineering, construction and  
221 environmental consultants to perform in-depth assessments of Charity  
222 Hospital disaster damages.
- 223 • The three (3) independent consultants unanimously concluded that the  
224 estimated cost to repair Charity Hospital far exceeded fifty (50) percent of the  
225 estimated cost to replace the hospital.
- 226 • Based on the determinations made by the independent professional  
227 assessment consultants, the State argued that the facility was more than fifty  
228 (50) percent damaged. Under FEMA PA program rules, a facility that is more  
229 than fifty (50) percent damaged is eligible for full replacement (rather than  
230 repair) and in this case should result in a newly constructed hospital.
- 231 • FEMA disagreed with all three (3) independent consultants. During the first  
232 **three (3) years** of discussions, FEMA offered the State a fraction – **\$28**  
233 **million** – of the cost to repair the facility to its former function and status.



- 234 • In 2009, Congress provided the State the ability to arbitrate eligibility  
235 disputes when it passed the *American Recovery and Reinvestment Act of*  
236 *2009* (ARRA).
- 237 • The State continued to pursue what it believed to be adequate funding to  
238 restore the hospital, resulting in FEMA increasing the available funding for  
239 repair to approximately **\$150 million**. While a significant increase over  
240 FEMA's original repair estimate of \$28 million, \$150 million was almost half of  
241 what the experts assessed the repair cost to be.
- 242 • After years of disagreement, Louisiana opted to bring the Charity Hospital  
243 matter to the Arbitration Panel authorized by ARRA. In January 2010, the  
244 panel ruled in Louisiana's favor, awarding a replacement hospital valued at  
245 approximately **\$474 million**.

246 This decision, which was almost **five (5) years** in the making, has allowed the State  
247 to *finally* move forward with plans to partner with the Veterans Administration (VA),  
248 to establish a world-class academic medical center providing high-quality health care  
249 and medical training to our region. Construction started on the new facility in New  
250 Orleans in February of this year, more than **seven (7) years** after the disaster.

### 251 ***Recovery School District***

252 In another high-profile recovery project, the **Recovery School District (RSD)** in  
253 New Orleans had 117 schools campuses damaged by Hurricane Katrina. The



254 Louisiana Department of Education developed a master plan for an entirely new  
255 school system that accounted for fifty (50) plus years of population shift due to  
256 normal demographic trending and the dramatic population migration in the aftermath  
257 of Hurricane Katrina.

258 The plan for the new school system configuration presented endless challenges to  
259 the conventional interpretation of *Stafford Act* policy. Existing policy is restrictive,  
260 discouraging a “smart” recovery that addresses current community needs and  
261 impedes the highest and best use of recovery resources.

- 262 • After several years of meeting with FEMA to find a solution that would support  
263 the changed requirements of the City’s school system, Louisiana turned to  
264 Congress. Congress passed the *Consolidated Appropriations Act of 2008*,  
265 which provided the school system critical relief. The legislation eliminated the  
266 Alternate Project funding penalty under the FEMA PA program and better  
267 facilitated the school system to aggregate its combined eligibility into a single  
268 reconstruction fund from which to implement its master plan without negative  
269 funding consequences.
- 270 • Even with this legislative support, the school system and FEMA spent **32**  
271 **months** resolving eligible scope of work for the 117 damaged school  
272 campuses by continuing to use a board-by-board, desk-by-desk approach to  
273 resolve cost issues.



- 274 • Five (5) years after the dispute arose, it became clear that the micro-analysis  
275 approach would continue beyond any definition of reasonable time. FEMA  
276 agreed to a more global approach to evaluating eligible scope and cost – an  
277 approach that was reviewed and approved by both FEMA and the Office of  
278 Management and Budget (OMB).
- 279 • The legislative relief and the welcomed innovation in applying the *Stafford Act*  
280 process allowed for a single PW, which could be used by the school district to  
281 recover a “system” that meets its current needs and demographics as  
282 opposed to simply recovering individual buildings, one at a time. In the  
283 process, it took FEMA almost **six (6) years** to move eligible damages from  
284 less than **\$300 million** to the needed **\$2.6 billion** for the recovery of the  
285 school system.

286 The result of this unique approach for the RSD recovery has provided the system  
287 with the funding for which it is eligible and desperately needs so that it can finally  
288 and aggressively pursue recovery in a smart, efficient and more resilient manner.  
289 RSD has been extraordinarily successful and should be a model for other recovery  
290 projects. Identifying this process immediately after the disaster would have saved  
291 countless man hours and expenses and allowed for a much quicker return of an  
292 essential component – the school system – of a community’s recovery.



293 ***City of New Orleans (CNO)***

294 A distinguishing characteristic of a catastrophic event is the magnitude of damage to  
295 a given community and its capacity to arrange not only the funding needed to  
296 recover but the human capital needed to organize, plan, manage, design and  
297 construct the necessary repairs. In a non-catastrophic disaster a community suffers  
298 damage to some infrastructure – one (1), two (2) or maybe a half dozen buildings or  
299 facilities. In most cases, communities can simultaneously proceed with  
300 repairing/reconstructing that infrastructure using other sources of temporary funding.  
301 For example, a governing authority might redirect its annual capital outlay funding  
302 budgeted for other non-critical projects planned prior to the disaster. When  
303 governing authority eventually comes to an agreement with FEMA on eligible work  
304 and funding, the redirected funding can then be replaced.

305 In a catastrophic event, the damage to public infrastructure is so large that the  
306 community does not have the ability to cash flow the repair/reconstruction of  
307 possibly hundreds and even thousands of projects, so it must wait on a full-funding  
308 agreement with FEMA before it can begin those repair/reconstruction projects. For  
309 example, the City of New Orleans (City) has **1,089 infrastructure projects** to repair,  
310 rebuild or replace with an estimated value of **\$1.4 billion** as a result of damage  
311 caused by Hurricane Katrina.



312 A year after Hurricane Katrina, FEMA and the City had only agreed to **804 projects**  
313 with an estimated value of **\$302 million**. At that time, the City did not have the  
314 funding from any source to cover the **\$1.1 billion** shortfall. Legally, or practically for  
315 that matter, the City cannot contract for repair/reconstruction unless it has all funding  
316 identified and available. Today, **seven (7) years** later, the City is still pressing FEMA  
317 for agreement on all remaining eligible damage.

318 ***The Youth Study Center***

319 To more visually illustrate the challenges within the current FEMA PA delivery  
320 system and to create an understanding of why communities in Louisiana are still  
321 struggling with recovery, we have attached an exhibit that depicts an actual timeline  
322 (Exhibit A) of a specific project. The exhibit chronicles PW development over time for  
323 *The Youth Study Center* in New Orleans.

- 324 • *The Youth Study Center* had significant wind damage as a result of Hurricane  
325 Katrina and had floodwaters in its interior for more than three (3) weeks. From  
326 the City's perspective, supported by an analysis from its professional  
327 architects and engineers, the building was over fifty (50) percent damaged,  
328 making it eligible for replacement under the provisions of the *Stafford Act*.
- 329 • FEMA's initial assessment in October of 2006 determined the building was  
330 not eligible for replacement and the damage repair estimate was **\$1.6 million**.



331 • On March 2, 2012, six (6) years and six (6) months after Hurricane Katrina  
332 struck, FEMA wrote the eighth amendment to the original PW, authorizing a  
333 replacement cost of **\$27,171,163** – a cost **17 times** more than the original  
334 FEMA estimate. FEMA, the State and the City met more than **182 times** on  
335 this one project over seven (7) years to reach this point. When the eighth  
336 amendment was issued, the City was still of the position that the project was  
337 deficient in eligible scope. Nine (9) months later, FEMA and the City are still in  
338 disagreement over **\$1.2 million of eligible work**, and hope to have  
339 agreement by the end of this year.

340 • Considering the normal design/bid/construction process, if all goes well, it is  
341 anticipated that the City will have a replacement for *The Youth Study Center*  
342 in 2016, **eleven (11) years** after Hurricane Katrina destroyed the building.

343 *The Youth Study Center* story is not an anomaly. The challenge the City faces on  
344 this project can be multiplied by most of the other **1,000 projects** within the City of  
345 New Orleans. A near-identical timeline could be prepared for hundreds, if not  
346 thousands, of similar projects throughout Louisiana. Just for Hurricanes Katrina and  
347 Rita over **2,000 projects** have already doubled in funding; more than **450** have  
348 grown by a **factor of ten (10)**, and **1,302** project grants have been amended more  
349 than **five (5) times**. Clearly, there is a need for a recovery program that results in a  
350 more accurate and timely identification of eligible work.



351 ***FEMA Public Assistance (PA) Grant Program***

352 The nature of the Federal PA grant program is such that each of the thousands of  
353 damaged facilities require a detailed, itemized assessment to determine what was  
354 damaged by the storms and what is a reasonable cost to repair those damages and  
355 restore a facility's pre-disaster function. The contents of each damaged facility have  
356 to be assessed desk-by-desk, chair-by-chair and lamp-by-lamp. Individual damage  
357 and cost decisions are required to determine FEMA's level of participation in the  
358 recovery of these projects.

359 Each FEMA eligibility decision is subject to scrutiny and challenge by the Applicant.  
360 In a catastrophic event there are literally millions of these decisions, each requiring  
361 review and analysis, and with such a heavy reliance on Federal funding, Applicants  
362 have to challenge each "no" decision. The process is excruciatingly slow and painful  
363 for the Applicants, who are under a continuous barrage of demands from the public  
364 for the government to restore basic services. Further compounding the problem,  
365 there is generally not enough trained staff on the FEMA, State or Applicant side to  
366 accomplish the mission in a reasonable time frame. When commenting on the  
367 process, one of the Federal Coordinating Officers (FCOs) working in the aftermath of  
368 Hurricane Katrina was quoted as saying, " . . .using the Stafford Act in the wake of  
369 *Hurricane Katrina is like bringing a donkey to the Kentucky Derby.*"



370 It is evident to FEMA grant recipients that FEMA policy regarding PA grants evolved  
371 within the context of non-catastrophic recovery experiences. We believe, as do  
372 countless other recovery professionals, the *Stafford Act* and regulation should be  
373 reevaluated in consideration of the challenges facing catastrophic recovery  
374 measures. It is also clear that FEMA policy has been influenced by various audits  
375 conducted by the U.S. Department of Homeland Security (DHS) Office of Inspector  
376 General (OIG), which have taken an overly restrictive interpretation of the *Stafford*  
377 *Act*, FEMA regulation and disaster-response policy. The interpretation of the *Stafford*  
378 *Act* and regulation belongs to FEMA and not DHS/OIG.

379 **RECOMMENDATIONS**

380 Over the years, Louisiana has presented FEMA with a number of requests for policy  
381 changes that allow more flexibility and recovery support for a catastrophic recovery  
382 program. Louisiana submits that the changes requested are not precedent setting or  
383 contrary to law or regulation, and would eliminate unnecessary delays in recovery,  
384 as well as reduce the overall cost of the recovery. Among those are  
385 recommendations regarding Direct Administrative Costs (DAC); Consolidated  
386 Alternate Projects (CAP) and End Game – a strategy to significantly accelerate  
387 Katrina projects to closeout; Insurance Reductions (5903 Reductions and  
388 subsequent-event deductions); and Alternate Dispute Resolution. Except for  
389 legislative relief, FEMA has been unwilling to implement any of these proposals.



390 ***Direct Administrative Cost (DAC)***

391 In 2009, FEMA agreed that eligible costs to an Applicant under the FEMA PA  
392 program are those costs of the Applicant directly related to the development of the  
393 Project Worksheet (PW) and the direct management of the project thereafter. Those  
394 identified expenses are referred to as Direct Administrative Costs (DAC).

395 DAC is an essential element in providing an Applicant the necessary resources to  
396 effectively engage in the FEMA PA process to ensure project worksheets adequately  
397 identify project requirements and the projects themselves are properly executed. For  
398 three (3) years, the State worked with FEMA to develop the concept and the  
399 documentation necessary to support the claim for reimbursement of DAC by the  
400 Applicant. In that period, several pilot PWs were written and funds disbursed to  
401 support the Applicant's activity. However, in 2012 FEMA decided that DAC cannot  
402 be provided to Katrina/Rita activities, placing in jeopardy funds that have already  
403 been disbursed to Applicants.

404 FEMA has recognized the need for supporting the unique work required to facilitate  
405 all PA-funded projects. For Katrina/Rita projects, FEMA has authorized a substitute  
406 provision – the *Katrina/Rita Closeout Incentive* – to address this unique work. The  
407 *Closeout Incentive* includes three (3) restrictive provisions.

- 408 • FEMA has artificially limited the amount of funding that an Applicant can  
409 receive for DAC activities to three (3) percent of project costs.



410 • The incentivized funding is limited to projects that are completed by August  
411 29, 2013, an arbitrary and unrealistic deadline.

412 • The level of documentation required to support a reimbursement has been  
413 redefined and requires documentation that is unlikely to exist.

414 FEMA's rationale for making this change is that they do not have authority for DAC  
415 for Katrina/Rita activities except under the language of Section 638(f) of the *Post-*  
416 *Katrina Emergency Management Reform Act* (PKEMRA). This provision directs the  
417 FEMA Administrator to provide an incentive for closeout in the FEMA PA program.

418 Although we applaud FEMA's intention to attempt to provide Applicants necessary  
419 resources to complete projects and close PWs, the implementation of that intent  
420 is misguided. The overly restrictive provisions render the *Closeout Incentive* of little  
421 to no value, and therefore FEMA has not met the incentive requirement called for  
422 by PKEMRA.

423 Further and importantly, the three (3) percent cap on expenses is artificial and will  
424 not fully support the needs of some Applicants. Prior to the change in FEMA policy,  
425 the State and FEMA piloted several Applicants and after review of expenses  
426 incurred, obligated PWs for DAC at the five (5) percent to six (6) percent level,  
427 significantly more than the three (3) percent now allowed in the *Closeout Incentive*.



428 The excessive documentation requirements imposed in FEMA's new DAC policy  
429 seven (7) years into the recovery simply obviates any Applicant's ability to take  
430 advantage of this needed resource. Since the requirement did not exist until  
431 recently, Applicants have not kept records to the specificity required by the  
432 new policy.

433 Finally, the DAC deadline is proposed as a closeout "incentive." However, as  
434 illustrated by the exhibit detailing *The Youth Study Center* in New Orleans, the  
435 length of time it takes to develop most PWs has positioned Applicants such that it is  
436 highly unlikely they will be able to finish projects by the deadline.

437 The State's analysis is that, in fact, the structure of the new policy, including the  
438 artificially imposed deadline, is not an "incentive" to closeout. By our calculations,  
439 **less than three (3) percent** of 23,000 projects resulting from Hurricanes Katrina  
440 and Rita will be able to take advantage of this critical resource. In fact, without this  
441 resource many Applicants will struggle with providing the activities that should be  
442 covered by DAC, and, as such, the recovery process will be significantly delayed  
443 and in some cases will stop.

#### 444 ***Consolidated Alternate Projects (CAP)***

445 Louisiana has proposed to allow recovering Applicants to "consolidate" the funds  
446 from a number of projects that no longer serve to efficiently support their mission



447 and apply those funds to reconfigure their facilities for a “smarter” recovery better  
448 suited to meet current needs.

449 Using a holistic planning process rather than a building-by-building recovery  
450 approach, the *Consolidated Alternate Project (CAP)* concept is intended to reduce  
451 cost and speed recovery by:

- 452 • Decreasing the administrative burden of developing and writing complex  
453 (sometimes byzantine) “crosswalk” PWs that, absent the CAP tool, must  
454 match eligible work and costs from existing structures to newly configured  
455 campuses and facilities. (See Exhibit B depicting current scope and cost alignment and  
456 Exhibit C that depicts the State’s CAP proposal.)
- 457 • Tracking costs and resolving complex eligibility questions during construction.
- 458 • Simplifying and expediting closeout.
- 459 • Minimizing Applicant confusion and frustration.

460 Because the CAP approach is an Alternate Project model, the CAP proposal would  
461 be further enhanced with a legislative fix to eliminate the current funding penalty (ten  
462 [10] to twenty-five [25] percent) for Alternate Projects.

463 The similar related proposal that GOHSEP has advanced is labeled the End Game.  
464 The End Game meets a FEMA HQ request to find a quick resolution to the  
465 remaining plus or minus 1,138 PWs still categorized by FEMA and/or GOHSEP as



466 unresolved. The proposal suggests consolidating all projects and all categories of  
467 work into a single fund to finance an Applicant's remaining recovery needs. The  
468 proposal is clear that such a consolidation of projects and funds might require  
469 legislation to address the ten (10) to twenty-five percent (25) percent Alternate  
470 Project penalty to cover projects other than schools, police and justice facilities  
471 already addressed in recent legislation.

472 The End Game proposal seemed to intrigue FEMA initially but has since lost its  
473 luster and is no longer being discussed as a viable solution for resolving the 1,138  
474 unresolved PWs noted above. The value of the End Game approach is a  
475 streamlined process that will save FEMA considerable administrative and operating  
476 expenses and produce a more rapid, effective recovery.

477 The benefit of either of these processes – CAP or the End Game – is that each  
478 allows a community to engage in a holistic planned recovery without the artificial  
479 programmatic boundaries imposed by the strictest interpretation of current Federal  
480 disaster recovery policy. For a community that has been completely devastated by a  
481 disastrous event, it makes little sense to repair/replace every school, every fire  
482 station, every governmental building if those replacements/repairs do not support  
483 community recovery needs or the changed needs of a community as a result of a  
484 catastrophic event. Through innovative recovery tools like CAP and the End



485 Game, we have an opportunity to bring back communities in a smarter, more  
486 resilient fashion.

487 We have seen the success of this approach with the New Orleans Recovery School  
488 District (RSD). We believe that FEMA has discretion under the *Stafford Act* to  
489 provide policy supporting this approach for the entire Louisiana recovery effort, and  
490 beyond, providing strategic and appropriate new recovery tools to communities.

491 ***Insurance: 5903 Reductions And Subsequent-Event Deductions***

492 It is Congress' intent under the *Stafford Act*

493 *“ . . . to provide an orderly and continuing means of assistance by the Federal*  
494 *Government to State and local governments in carrying out their*  
495 *responsibilities to alleviate the suffering and damage which result from such*  
496 *disasters by . . . (4) encouraging individuals, States, and local governments to*  
497 *protect themselves by obtaining insurance coverage to supplement or replace*  
498 *governmental assistance . . . ”*

499 The regulations and policy that implement Congressional intent *“to encourage*  
500 *protection by obtaining insurance”* may have at one time been appropriate and  
501 consistent with the intent of the *Stafford Act*. However, these policies are no longer  
502 consistent with the current insurance market and in our view, and that stated by the



503 insurance industry, **do not provide proper incentives for sound risk-**  
504 **management decisions.**

505 As a result of the rigorous work and research required to administer the thousands  
506 of Katrina and Rita recovery grants, Louisiana has identified a number of  
507 unanticipated and unintended consequences of either inartfully drafted or incorrectly  
508 interpreted regulation and subsequent policy. There are two (2) implementation  
509 policies of particular concern: (1) FEMA PA funding penalties when Applicants  
510 use blanket policies; and (2) how deductibles are handled in second and  
511 subsequent events.

512 *Blanket Policies: 5903 Reductions*

513 Nearly every Applicant in Louisiana insures its facilities using what is commonly  
514 referred to as a blanket policy. Such a policy provides for a total maximum  
515 aggregate loss limit but does not provide full coverage for every Applicant-owned  
516 facility. The theory is that there is a low probability that every facility will be damaged  
517 in a single event. The private sector follows the same risk-management philosophy,  
518 as it is simply not cost-effective to insure every facility to its maximum value. Current  
519 FEMA policy and/or regulation (or interpretation thereof) penalize Applicants by  
520 reducing – unfairly in our view – recovery funding when blanket policies are chosen.  
521 This penalty is known by its accounting code: 5903 Reduction.



522 We are already seeing the impacts of FEMA's blanket insurance-penalty policy in  
523 reduced recovery funding to Louisiana FEMA PA grant recipients in post-  
524 Katrina/Rita disasters. The penalty is estimated to reduce future recovery funding in  
525 Louisiana by **\$4 billion** in the next Katrina-like event.

526 This penalty does not apply to facilities that are covered by individual policies, but  
527 coverage by individual policies limits the breadth of facilities that can be protected  
528 within a community's operating budget. Applicants have the perverse incentive to  
529 reallocate their limited insurance resources to purchase individual coverage on  
530 facilities to maximize their Federal assistance in a declared event with the  
531 unfortunate consequence of increasing their risk in a non-declared event. We  
532 believe FEMA's interpretation of its own regulations does not adequately account for  
533 standards within the insurance industry.

534 Deductibles

535 FEMA's treatment of insurance **deductibles** also poses a serious challenge to  
536 recovering communities.

537 Prior to 2009, insurance deductibles were considered an insurable loss and an  
538 eligible reimbursable expense. That position is consistent with both the *Stafford Act*  
539 and regulation. In 2009 FEMA changed its policy such that insurance deductibles  
540 are only eligible for the first FEMA Public Assistance (PA) claim on any given facility.  
541 In subsequent declared events, facilities that have received FEMA PA funding in a



542 previous similar event are denied eligibility for deductibles. The change in policy is in  
543 direct conflict with regulation. Regulation calls for a reduction of “. . . *the eligible*  
544 *costs by the amount of insurance proceeds which the grantee receives . . .*” FEMA’s  
545 new policy is a misapplication of the word “proceeds” in the regulation in that a  
546 deductible is certainly not a “proceed” to the grantee. This has the untenable effect  
547 of reducing critical recovery funding by an estimated **\$240 million** to the State of  
548 Louisiana in the next Katrina-like event. Reduced recovery funding as result of lost  
549 deductibles will rise exponentially in subsequent major disasters.

550 Insurance deductibles are a **requirement** of the insurance industry. The fact that  
551 they continue to rise is inescapable. Most Applicants are faced with a take-it or  
552 leave-it deductible amount.

553 Reducing funding by \$240 million (and surely more) in future disaster assistance will  
554 only exacerbate and slow recovery and may bankrupt more vulnerable Applicants.

555 These insurance challenges are not exclusive to Louisiana. Louisiana is just the first  
556 to experience the harsh impacts of these policies because of the number of facilities  
557 that were damaged by Hurricanes Katrina and Rita and then the quick follow up of  
558 Hurricanes Gustav and Ike – three (3) years later – and recently now Hurricane  
559 Isaac. Every Katrina/Rita damaged facility (approximately **24,000**) will be **denied**  
560 **critical recovery funding (through the loss of subsequent-event insurance**  
561 **deductibles) for every storm thereafter.** Other vulnerable states such as Texas,



562 Alabama, Mississippi, Florida, and now New York, New Jersey and other Sandy-  
563 impacted states will soon be surprised by the effects of these policies.

564 The deductibles issue, along with the 5903 insurance penalty are having immediate  
565 and substantial impacts on the Louisiana recovery. In addition to slowing the  
566 recovery, the application of FEMA's position on both policy decisions creates an  
567 environment that necessitates **perilous risk-management decisions** and ultimately  
568 results in higher overall cost.

569 The State has offered FEMA specific recommendations for interim solutions to these  
570 insurance challenges. The long-term solutions are far more complex and will require  
571 collaboration with the insurance industry.

572 ***Arbitration Option***

573 Since February 17, 2009, the effective date of the arbitration option for Hurricanes  
574 Katrina and Rita established under the *American Recovery and Reinvestment Act of*  
575 *2009* (ARRA), twenty-six (26) arbitration cases have been filed by thirteen (13)  
576 separate Applicants. Eighteen (18) of those cases had successful outcomes for the  
577 Applicant, either through settlement with FEMA or by ruling of the Civilian Board of  
578 Contract Appeals (CBCA). Those outcomes resulted in an additional **\$797 million** in  
579 obligated recovery assistance funding to the Applicants represented in those cases.



580 In only two (2) cases has the CBCA denied requested relief, and the remaining six  
581 (6) cases are still pending. Several new requests for arbitration are currently being  
582 prepared by Applicants for submission to the CBCA.

583 From the State's perspective, the ARRA arbitration option has been exceptionally  
584 successful. Specifically, it has accelerated the dispute-resolution process as it was  
585 designed to do and has leveled the playing field for the involved parties.

586 FEMA's current and co-existing two (2)-level administrative appeals process utilizes  
587 FEMA management personnel to make the final determinations regarding disputed  
588 FEMA decisions at each level of appeal (Region and HQ), with Region in each  
589 instance providing an analysis of the dispute. This appeals mechanism allows FEMA  
590 local personnel to potentially influence first-appeal Region determinations, and in  
591 each instance those making first-appeal Region determinations to actively influence  
592 second-appeal HQ determinations. Whether such influence is actual or merely  
593 possible, a system, which either permits such or a perception of such, is  
594 undesirable. The ARRA arbitration option eliminates this perception and the State  
595 believes this has not only provided a fully fair and impartial hearing process, but has  
596 further influenced both Applicants and FEMA to resolve disagreements relating to  
597 significant projects during project formulation.

598 The State of Louisiana recommends that Congress consider making the existing  
599 arbitration option or similar form of independent dispute-resolution alternative



600 available for all current and future disasters. Additionally, we recommend amending  
601 the current FEMA appeals process to have a first appeal conducted Regionally  
602 before an administrative law judge (ALJ) in a manner resembling the trial phase of  
603 civil litigation, followed, if necessary, by an appeal to the agency head. Because of  
604 the clearly positive outcome resulting from the use of the independent CBCA panel  
605 under the ARRA arbitration process, the State believes the public would be  
606 significantly better served by the inclusion of independent review within any  
607 mechanism for challenging agency decisions.

608 Additional Recommendations for ARRA Arbitration Alternative

609 If the ARRA arbitration alternative has any shortcoming it is found in that section of  
610 the regulation, which states:

611 *“ . . . The expenses for each party, including attorney’s fees, representative*  
612 *fees, copying costs, costs associated with attending any hearing, or any other*  
613 *fees not listed in this paragraph will be paid by the party incurring such costs.”*

614 (44 CFR 206.209(I))

615 It is the State’s belief that this limitation forecloses many small or budgetary-  
616 constrained Applicants from pursuing valid arbitration claims. Further, the State’s  
617 observation has been that unlike the FEMA appeals processes, the ARRA arbitration  
618 option is both sophisticated and time sensitive for which an expectation of success



619 typically requires the use of legal counsel and/or other consultants. The current  
620 process requires that Applicants assume the cost of those services whether they  
621 prevail or lose their case. Applicants whose operating budgets are already pressed  
622 to the limit can often not afford to incur the costs associated with arbitration, making  
623 this important dispute-resolution tool unavailable to them.

624 Conversely, FEMA is already funded to incur these costs. Thus, the defense of  
625 an arbitration case would not normally impose any additional financial burden  
626 upon FEMA.

627 To make the arbitration process more reasonably available to small Applicants, the  
628 State suggests that consideration be given to modifying 44 CFR 206.209(l) to allow  
629 reasonable costs, as determined by the CBCA panel, to be awarded to an Applicant,  
630 which prevails in whole or part. If the Applicant was unsuccessful in its claim, it  
631 would not be awarded costs.

632 Awarding reasonable costs to a prevailing Applicant ensures that an Applicant that  
633 has confidence in its claim could pursue such with an expectation that there would  
634 be no funding shortfall if it prevailed. Frivolous claims, on the other hand, would  
635 continue to be unrewarded and therefore likely avoided.

636 Finally, it is suggested that the statutory threshold for arbitration of \$500,000 is too  
637 high. Many Applicants, especially the smaller governmental entities or private



- 638 nonprofits, have significant issues with projects of lesser value but are denied
- 639 equitable recourse to independent third-party review.



640

641 **CONCLUSION**

642 The challenges to successful catastrophic recovery are many.

- 643 • States and communities lack capacity. Whether it is the availability of human  
644 capital or funding, communities facing recovery from catastrophic events lack  
645 critical resources.
- 646 • FEMA policies and processes are not supportive of catastrophic events.
- 647 • FEMA policies are inconsistent with the language and intent of the *Stafford*  
648 *Act* and inconsistent in implementation from disaster-to-disaster, state-to-  
649 state, region-to-region and between FEMA Regions and HQ; and are highly  
650 bureaucratic and often subjective.
- 651 • Applicants are confused, critical funding is held up and in some cases  
652 causing recovery to literally grind to a halt.
- 653 • The availability of Direct Administrative Costs (DAC) reimbursements so that  
654 cash-strapped communities have the resources they need to manage their  
655 recovery.
- 656 • Adding the Consolidated Alternate Project (CAP) and End Game tools to the  
657 recovery toolbox so that those receiving FEMA PA funding can use those  
658 resources for “smarter” recoveries and more resilient communities. An



659 important by-product of the availability of both of these tools is that they can  
660 significantly expedite recovery.

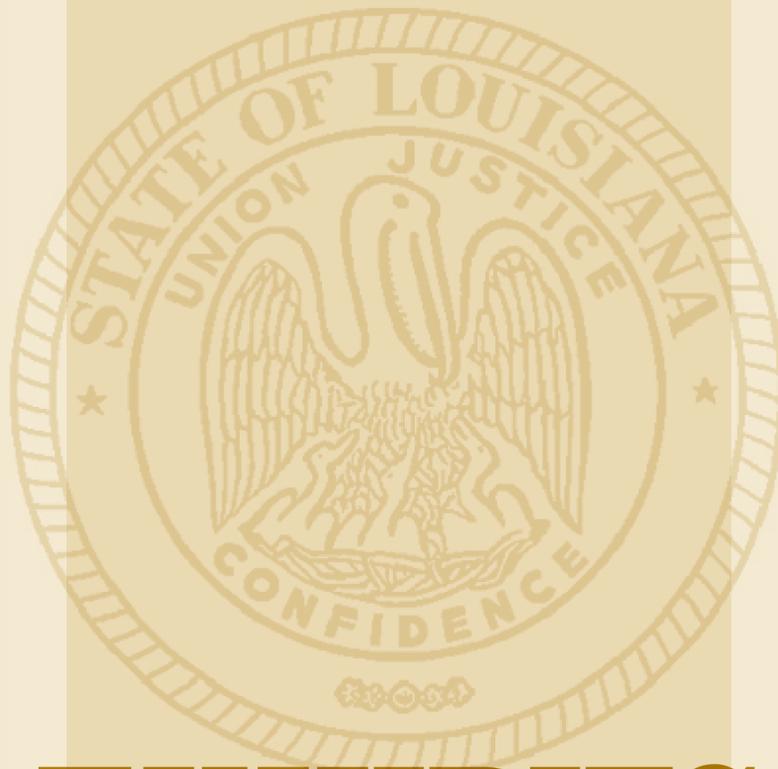
661 • Eliminating the 5903 Reductions and ensuring that subsequent-event  
662 deductibles are reimbursed. With regard to the latter, the *Stafford Act* is clear  
663 in that Federal assistance should be reduced by insurance “proceeds;” by any  
664 definition, a deductible is not a proceed. With regard to 5903 Reductions, it  
665 simply makes no sense and is in no one’s best interest – the Applicant, the  
666 State, FEMA or the U.S. taxpayer – to incentivize communities to make risk-  
667 management decisions that result in less insurance coverage and higher risk  
668 to the Applicant.

669 • Make arbitration available to all FEMA PA Applicants. Arbitration accelerates  
670 the dispute-resolution process and ensures a fair and objective hearing of the  
671 issues.

672 Recovery is hard work. It should not be made harder. Working together, we can  
673 resolve the barriers.

674 Thank you for the opportunity to come before this Committee. We eagerly look  
675 forward to your recommendations.





# EXHIBITS

GOVERNOR'S OFFICE



HOMELAND SECURITY &  
EMERGENCY PREPAREDNESS

**This page is intentionally left blank.**

WHY IS THE RECOVERY TAKING SO LONG?



# time matters

LOUISIANA RECOVERY  
Katrina | Rita | Gustav | Ike | Isaac  
+ Tropical Storm Lee



# 3 years

DESIGN <sup>BID</sup> BUILD

## normal non-disaster

12 MONTHS      18 MONTHS

We're not rebuilding a fire station or a school or a public building. We're building back 605 K-12 schools, fire houses in 74 fire districts and more.  
**WE'RE BUILDING BACK WHOLE COMMUNITIES!**

No agreement on:

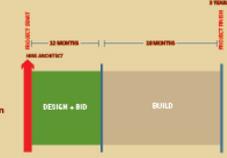
- > **CODES & STANDARDS.**
- > **HAZARD MITIGATION.**
- > **REQUIRED ELEVATIONS.**
- > **WHERE FLOOD ZONES ARE.**
- > **ELIGIBLE WORK.**
- > **REIMBURSABLE ADMINISTRATIVE COSTS.**
- > **AND MORE.**

The average disaster is valued at **\$60 million** and takes **4.9 years** to close out.

- > **KATRINA/RITA IS EXPECTED TO BE \$14+ BILLION IN FEMA PUBLIC ASSISTANCE (PA) SUPPORT ALONE.**
- > **A LARGER RECOVERY WILL TAKE LONGER.**

REMEMBERING that all damages have NOT yet been captured 7+ years later...

- > **WE BELIEVE THERE'S \$1.7 BILLION STILL LEFT TO IDENTIFY AT THE 87-MONTH MARK.**



**NON-DISASTER**  
Typical Local Applicant Construction Timeline For a Single Project

OVER >>

# \$4-14.8 billion

## what has happened

confusion over **scope + costs**  
uncertainty of timing and funding

# 15.5 years

## Katrina/Rita disaster reality

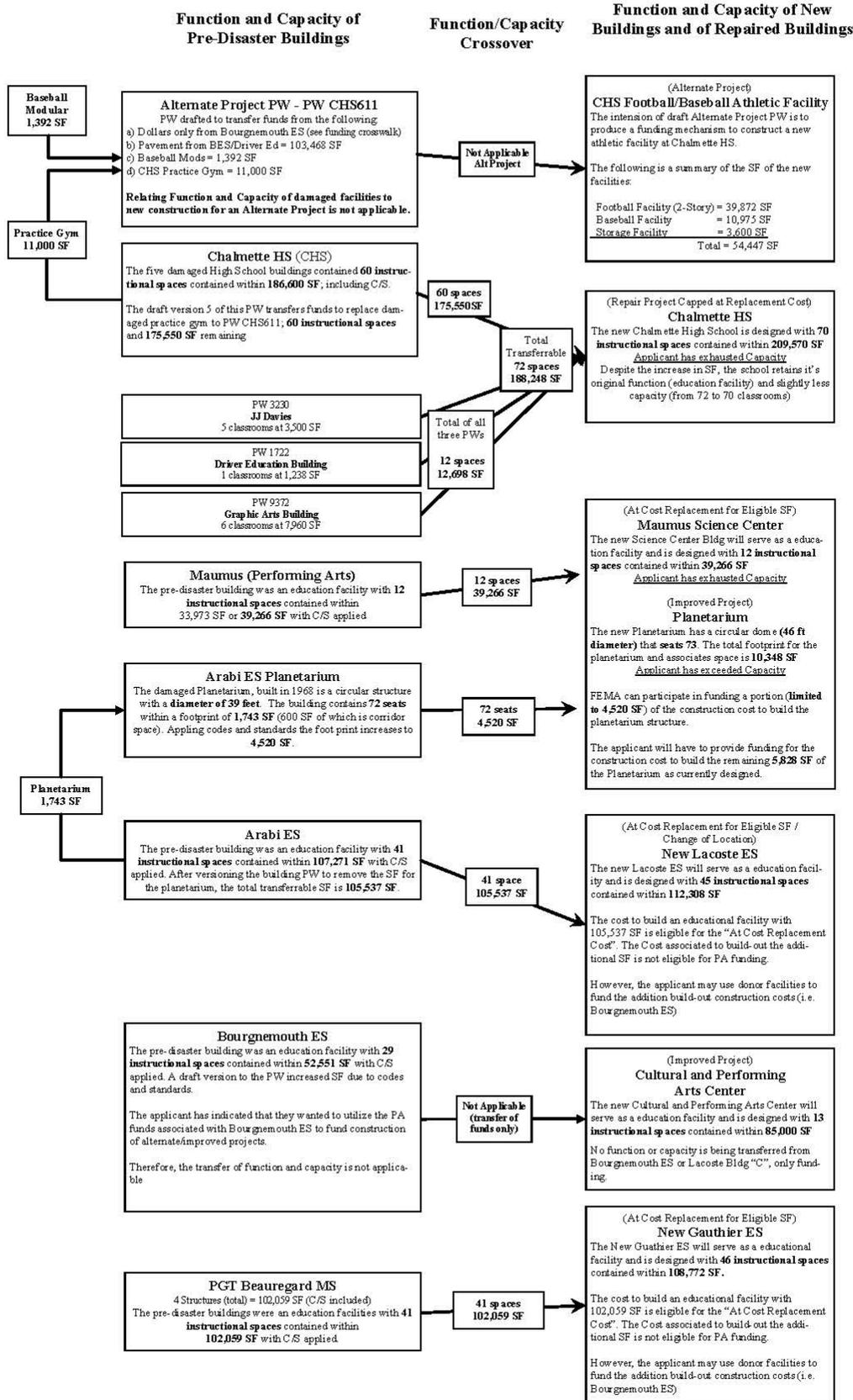
# \$14+ billion





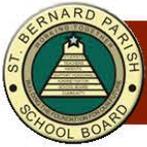
FUNDING AND CAPACITY CROSSWALK FOR ST. BERNARD PARISH SCHOOL BOARD (SBPSB)

July 19, 2011



Note: C/S—denotes Codes and Standards

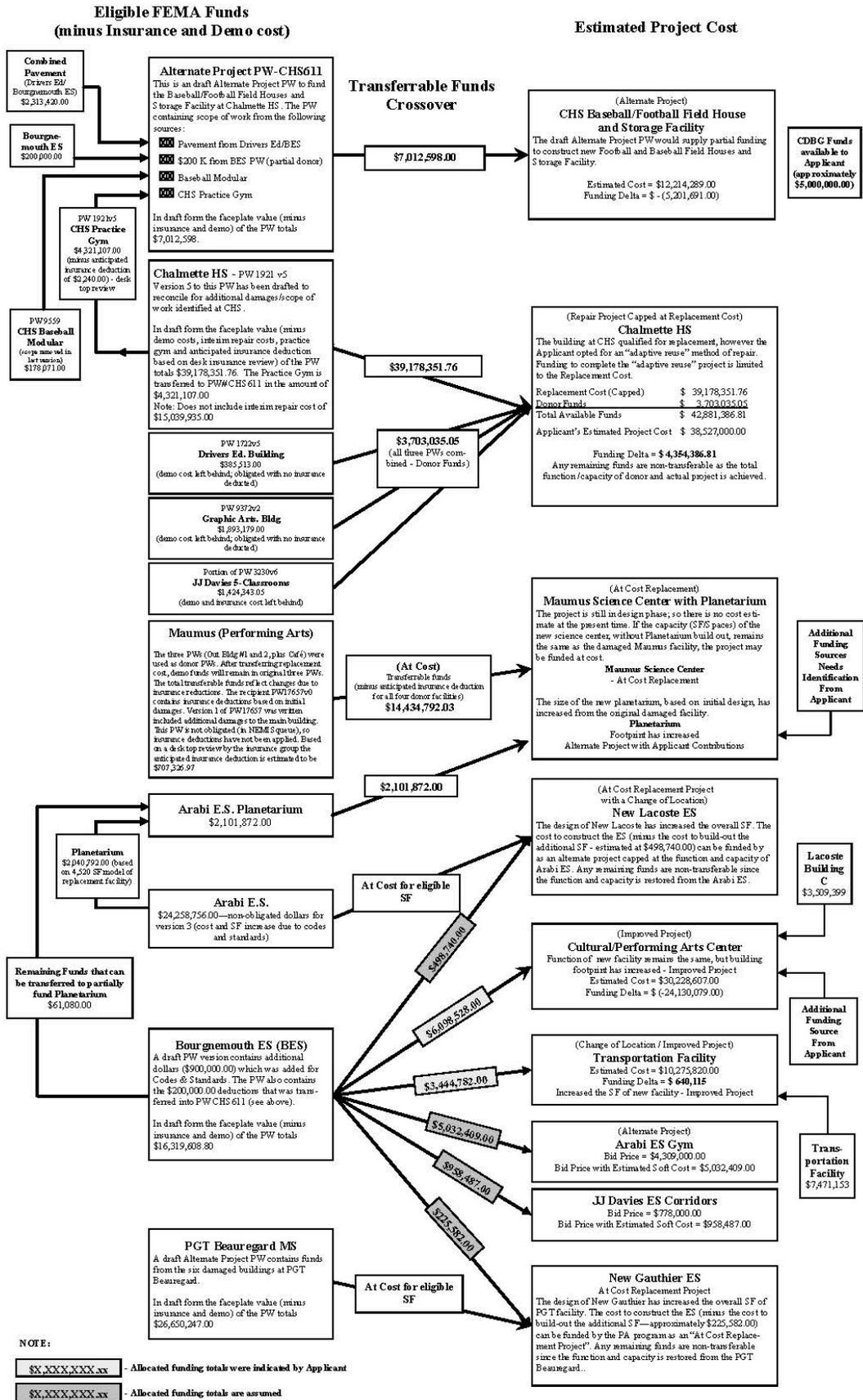
DISCLAIMER: This document is prepared to address a specific request for information regarding the FEMA Public Assistance program for FEMA-1603/1607-DR-LA. The information herein represents the status as of the date of this document, does not represent Public Assistance policy, and should not be used as a decision making tool



# FUNDING CROSSWALK FOR ST. BERNARD PARISH SCHOOL BOARD (SBPSB)

July 19, 2011

\$ Amount are live numbers and are subject to change due to versions, insurance and change orders





# FUNDING CROSSWALK FOR ST. BERNARD PARISH SCHOOL BOARD (SBPSB) July 19, 2011

\$ Amount are live numbers and are subject to change due to versions, insurance and change orders

