NRECA
America's Electric Cooperatives

June 13, 2021

Ms. Kristen Shedd
Associate Chief Counsel
Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency
500 C Street, SW
Washington, DC 20472

Filed Electronically at: www.regulations.gov

RE: Docket ID FEMA–2021-0011

Dear Ms. Shedd:

The National Rural Electric Cooperative Association ("NRECA") appreciates the opportunity to submit comments on the Federal Emergency Management Agency's ("FEMA") Notice and Request for Information titled "Request For Information on FEMA Programs, Regulations and Policies" that appeared in the Federal Register on April 22, 2021[1].

I. Introduction and Background

NRECA is the national service organization for more than 900 private nonprofit rural electric utilities that provide electric energy to over 42 million people in 48 states.

Every year, ice storms, tornadoes, floods, hurricanes, and similar natural disasters destroy NRECA's member cooperatives' critical facilities and infrastructure (such as poles, lines, and transformers). If this damage is caused by a major disaster declared by the President of the United States, then many of the cooperatives' response and recovery costs are eligible for reimbursement through grants from the FEMA. These grants, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act and administered under

[1] 86 FR 76, pages 21325-21328, April 22, 2021.

FEMA's Public Assistance Program, can amount to tens of millions of dollars and are critical to the ability of cooperatives to recover from disasters and get the lights back on quickly and safely. The grant program best serves its purpose when it is adequately funded by Congress and efficiently administered so that meritorious cost reimbursement grants are speedily disbursed and subject to minimal or no risk of deobligation. NRECA's member cooperatives are best positioned to support the communities they serve and help restore strong local economies when the grant program is administered fairly and efficiently and offers certainty.

The Executive Order[2] that underlies FEMA's inquiry includes the following in the definition of underserved communities: "…persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality."[3]

America's Electric Cooperatives provide electric service in 364 (92%) of the Persistent Poverty Counties identified by the U.S. Treasury Community Development Financial Institutions Fund (CDFI). More than 250 distribution cooperatives and NRECA-member public power districts serve an estimated 4.2 million people in these counties, with poverty rates ranging from 20% to over 60%.

The long-term entrenched nature of poverty in these areas presents significant challenges to electric co-ops serving there. Extreme poverty is often geographically concentrated in only a portion of a county. Keeping electricity affordable is especially important for low-income consumer-members who are most vulnerable to energy poverty. High poverty rates are often reflected in less efficient housing stock, such as older manufactured housing, which can lead to wasted energy and disproportionately high bills for those who can least afford it. These households often lack the resources to make energy saving improvements to their homes. To assist, co-ops have developed programs to help repair, weatherize, and install cost-efficient appliances.

In areas of energy poverty, availability of affordable (and safe and reliable) electricity is critical. In such communities, in the wake of a disaster, electric cooperatives strive to restore their systems without raising rates to people who are already economically stressed pre-disaster; raising rates after a disaster simply exacerbates energy poverty in these communities. But this is exactly what electric cooperatives will have to do absent fair, efficient, consistent, and adequate FEMA reimbursement processes. Improving access to FEMA funds for electric cooperative consumer-owners in impoverished communities is a critical component of any real effort to mitigate the growing inequity in these communities.

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[2] Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009.
[3] Ibid.

As we detail below, there are several FEMA policies and practices that negatively impact rural electric cooperatives and the communities they serve. Chief among these are delay in receiving funds once Project Worksheets are completed and approved. Long wait times can force electric cooperatives to borrow substantial amounts of money to bridge the time between disaster impacts and FEMA payment. The interest on these loans becomes a cost to the consumer owners of the electric cooperatives. We encourage FEMA to reimburse the interest on these loans as an eligible cost incurred after a disaster hits an electric cooperative's system.

Sudden changes in FEMA policy absent at least an opportunity for input, much less a formal rulemaking process is particularly inequitable to rural communities. For example, FEMA unilaterally changed the definition for emergency work vs. permanent work for utilities for Hurricanes Michael and Laura. The estimated impact of this sudden change in policy is that counties in Louisiana that were impacted by Hurricane Laura will have to bear ***an additional $12.5 million*** of storm expenses.

Denying Stafford Act eligible private nonprofit (PNP) entities such as electric cooperatives direct access to FEMA's Building Resilient Infrastructure and Communities (BRIC) funds is another example of depriving rural and impoverished communities of opportunities to strengthen and harden electric systems, providing future savings to these communities.

Declining to implement Section 1232 of the Disaster Recovery Reform Act has denied badly needed assistance to rural areas. FEMA has declined to provide more information on how it plans to implement Section 1232 of the DRRA. Section 1232(a) of the DRRA section requires that FEMA "{I}n making recommendations to the President regarding a major disaster declaration, the Administrator of the Federal Emergency Management Agency shall give greater consideration to severe local impact or recent multiple disasters. Further, the Administrator shall make corresponding adjustments to the Agency's policies and regulations regarding such consideration."[4] This is a very specific and detailed requirement and yet FEMA, in a recent rulemaking[5] declined to propose further detail on how this section will be implemented.

We offer as an example of the harm that ignoring section 1232 of the DRRA can cause, the case of Golden Spread Electric Cooperative, Inc., a non-profit electric generation and transmission cooperative based in Amarillo, Texas, serving some of the most rural regions of Texas. Golden Spread is owned by 16 Member non-profit distribution cooperatives which serve approximately 230,000 retail electric meters over an expansive area,

[4] Disaster Recovery Reform Act of 2018, Section 1232.
[5] Notice of Proposed Rulemaking: "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program" 85 FR 240, December 14, 2020

including the Panhandle, South Plains and Edwards Plateau regions of Texas (covering 24% of the State), the Panhandle of Oklahoma, and small portions of Southwestern Kansas and Southeastern Colorado.

In October 2020, the Oklahoma and Texas Panhandles were hit by a severe winter storm. Several Golden Spread members suffered damage, totaling approximately $15-$20 million. This translates to more than $1,000 in damages per person in one county. By comparison, in 2020, FEMA's state threshold was $1.53 per capita, and the county threshold was $3.89 per capita. These per capita figures are enormous, but because Section 1232 of the DRRA largely has been ignored to date, no federal aid reached these impacted and underserved communities.

Similarly, in 2017, North Plains Electric Cooperative, Inc., located in Perryton, Texas, suffered over $11 million in damages from Winter Storm Jupiter. The per capita impacts were almost $500 per person for the counties impacted. North Plains Electric Cooperative did not receive assistance because the total cost of the impact did not exceed Texas' state threshold. However, electric cooperatives in Oklahoma, only a few miles away, were granted FEMA assistance for comparable damage related to the same storm. To be clear, the North Plains impact was suffered prior to the passage of the DRRA and thus was not eligible for consideration under severe local impacts or recent multiple disasters as that standard did not yet exist in 2017. Nevertheless, it is the type of situation that we believe led to Congress legislating consideration of local impacts and recent multiple disasters.

FEMA has proposed in its Close Out Policy rulemaking (Docket ID FEMA-2015-0020) that its revised close out policy (and protections against deobligation) does not apply to Private Nonprofit (PNP) entities such as electric cooperatives. In our comments in the docket, NRECA made the case that FEMA's interpretation of Stafford Act Section 705 was contrary to the plain language of the statute and that FEMA's interpretation would serve to penalize electric cooperatives and deny them the benefit of protections from deobligation that Section 705 provides. This is another example of how FEMA policy should be reformed to provide equity to underserved communities.

II. <u>**Answers to General Questions**</u>

1. *Are there FEMA programs, regulations, and/or policies that perpetuate systemic barriers to opportunities and benefits for people of color and/or other underserved groups as defined in Executive Order 13985 and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to deliver resources and benefits more equitably?*

Response to General Question 1:

As noted above, there are several programs, regulations and policies that perpetuate systemic barriers to underserved rural communities. These include:

a. Policy: Emergency vs. Permanent Work.

When natural disasters create widespread power outages, electric cooperatives' work to get the lights back on safely and quickly is essential to response and recovery. Without electric power, essential facilities such as hospitals, water and wastewater treatment plants, shelters, food service, telecommunications, educational facilities, correctional facilities, etc. cannot complete their own restoration efforts. In the wake of a storm, the initial power restoration process begins almost immediately. Often, electric distribution lines are replaced onto damaged or out-of-plumb poles and are not sagged properly. This work is not necessarily up to code but is temporary and sustainable in the short-term until permanent repairs can be made. This emergency temporary work supports the community's need for the rapid restoration of essential electric service. This type of prompt, safe work and the services that support it has traditionally been considered emergency work. Recently FEMA has begun to claim that the initial post disaster electric power restoration work should be classified as permanent work. To get the system back into compliance with National Electrical Safety Code and other standards, the emergency work performed immediately after a disaster sometimes needs to be adjusted or redone. This work typically involves replacing out-of-plumb poles, properly sagging conductor, etc. This work is permanent in nature and is appropriately categorized as such.

We recommend that FEMA revise its policy to recognize that the emergency period for electric utilities is the period between the disaster and when the last meter that can receive power does receive power. Under this definition, permanent work would cover the follow up work that is sometimes required after the rapid push to restore electricity after a disaster.

b. Program: Lengthy delays in receipt of funds pursuant to approved Project Worksheets.

Electric cooperatives rely on prompt receipt of FEMA Public Assistance funds, obligated pursuant to properly submitted Project Worksheets and subject to prompt audits and approval. Absent timely receipt of obligated Public Assistance funds, rural electric cooperatives are forced to borrow significant capital and incur interest costs on these large loans. These delays have in some extreme cases exceeded a decade.

We recommend that FEMA streamline and update its procedures to ensure that lengthy delays are avoided and underserved rural communities won't incur additional and unnecessary expense. In addition, we urge FEMA to reimburse the interest on loans electric cooperatives must utilize while waiting for FEMA to obligate the funds to the states.

c. Policy: Section 1232 of the Disaster Recovery Reform Act of 2018 (DRRA)

Section 1232(a) of the DRRA section requires that FEMA "{I}n making recommendations to the President regarding a major disaster declaration, the Administrator of the Federal Emergency Management Agency shall give greater consideration to severe local impact or recent multiple disasters. Further, the Administrator shall make corresponding adjustments to the Agency's policies and regulations regarding such consideration."[6] In a recent rulemaking[7], FEMA stated that "{W}ith respect to the recent multiple disasters and localized impact factors, FEMA evaluated the provision of the DRRA as well as the current factors in regulation and determined that the regulation is sufficiently flexible to address the DRRA requirements."[8] Nowhere has FEMA indicated the parameters it will use in determining how to give greater consideration to severe local impact and recent multiple disasters. This issue is critical to electric cooperatives and the communities they serve. Take for example the case of Golden Spread Electric Cooperative, Inc., a non-profit electric generation and transmission cooperative based in Amarillo, Texas, serving some of the most rural regions of Texas. Golden Spread is owned by 16 Member non-profit distribution cooperatives which serve approximately 230,000 retail electric meters over an expansive area, including the Panhandle, South Plains and Edwards Plateau regions of Texas (covering 24% of the State), the Panhandle of Oklahoma, and small portions of Southwestern Kansas and Southeastern Colorado.

In October 2020, the Oklahoma and Texas Panhandles were hit by a severe winter storm. Several Golden Spread members suffered damage, totaling approximately $15-$20 million. This translates to more than $1,000 in damages per person in one county. By comparison, in 2020, FEMA's state threshold was $1.53 per capita, and the county threshold was $3.89 per capita. These per capita figures are enormous, but because Section 1232 of the DRRA largely has been ignored to date, no federal aid reached these impacted, underserved communities.

According to county level census data for 2019, the Poverty Rate in Golden Spread's territory is 16% (compared to 13.6% in Texas and 12.3% nationwide. Golden Spread's territory includes portions of nine Persistent Poverty Counties, with long-term poverty rates of 20% or higher. It is estimated that the average

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[6] Disaster Recovery Reform Act of 2018, Section 1232.
[7] Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, Docket ID FEMA–2020–0038
[8] Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 85 Fed. Reg., p 80720, December 14, 2020.

household income in Golden Spread's territory is about 15% lower than the U.S. average, and 13% lower than the Texas average. Twenty percent (20%) of households in Golden Spread's territory have income lower than $25,000 and 30% of households have income lower than $35,000. By comparison, in the United States, 17% of households have income of less than $25,000 and 25% of households have income of less than $35,000. In Texas, those figures are 18% (households with income lower than $25,000) and 26% (households with income lower than $35,000.

We recommend that FEMA clearly delineate how it will give the legislatively mandated greater consideration to severe local impact or recent multiple disasters.

d. Policy: Lack of direct access to BRIC funds for Private Nonprofit entities.

A recent article[9] points out that meeting the Biden Administration goal of doubling the amount of mitigation funding will be difficult because the funds will be allocated using a process that pits state and local governments against each other. "Experts say the system is notoriously difficult for low-income and minority communities. Competitive grant programs, such as the Federal Emergency Management Agency initiative that Biden boosted, require exhaustive applications that can be hard for low-income communities to complete because they often lack the staff and expertise — or the money to hire a consultant."[10]

We recommend that FEMA adopt a policy that would allow direct access to BRIC funds for Private Nonprofit entities such as rural electric cooperatives as a strategy to boost access to these funds by underserved communities. Recognizing that economically challenged communities often do not have the means to fund the required cost share, electric cooperatives may be ideal recipients that are able to finance the cost share and develop projects that will benefit whole communities by making them less susceptible to power outages that may accompany natural and other disasters.

e. Policy: Closeout

In September 2015 FEMA published a proposed Recovery Policy, Stafford Act Section 705, Disaster Grant Closeout Procedures (the "Policy"). The Policy stated it is intended to "clarif[y] FEMA's requirements under Section 705" and "set[s] forth the guidelines FEMA will now use to determine whether Section 705(c) applies to bar FEMA from deobligating grant funding."[11] Further in December, 2020, FEMA issued a draft closeout policy.

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[9] "FEMA climate grants pose challenge for poor communities" in *Climatewire* June 1, 2021.
[10] Ibid
[11] FEMA proposed Recovery Policy, Stafford Act Section 705, Disaster Grant Closeout Procedures, at III.

The subject of deobligation is important to electric cooperatives as managing finances to keep rates as low as possible particularly in the economically challenged communities they serve, is difficult with the possibility that funds disbursed to reimburse for disaster damages will subsequently be clawed back or deobligated. We understand the need for FEMA to serve as a good steward of federal tax dollars, and we support the goal of Section 705 of the Stafford Act to provide some certainty around a limited time during which FEMA can claw back funds.

In its draft policy, FEMA states that the policy does not apply to private nonprofits (PNP's), raising the concern that electric cooperatives and the economically challenged communities they serve will not have the protection of Section 705 of the Stafford against deobligations long past a reasonable time frame.

We recommend that FEMA reissue the closeout policy to include private nonprofits in those protected from deobligations outside a reasonable time frame.

2. *Are there FEMA programs, regulations, and/or policies that do not bolster resilience to impacts of climate change, particularly for those disproportionately impacted by climate change, and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to bolster resilience to the impacts of climate change?*

Response to General Question 2:

Please see our response above to General Question 1, where we discuss lack of direct access to BRIC funds for Private Nonprofits. To expand direct BRIC eligibility to Private Nonprofits would increase the mitigation projects that electric cooperatives could apply for to harden systems and decrease electric power outages during natural and other disasters. As we state above, electric cooperatives could partner with the underserved communities where they are located to develop whole of community projects and potentially be a source to finance the cost share that underserved communities struggle to pay.

3. *Are there FEMA programs, regulations, and/or policies that do not promote environmental justice? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to promote environmental justice?*

Response to General Question 3:

(No response provided).

4. *Are there FEMA programs, regulations, and/or policies that are unnecessarily complicated or could be streamlined to achieve the objectives of equity for all (including people of color and others who have* *been historically underserved, marginalized, and adversely affected by persistent poverty and inequality), bolstering resilience to climate change, or addressing the disproportionately high and adverse climate-related impacts on disadvantaged communities in more efficient ways? If so, what are they and how can they be made less complicated and/or streamlined?*

Response to General Question 4:

An ongoing point of complication when dealing with FEMA is the issue of what constitutes emergency work vs. permanent work. In some cases, this distinction can add a greater financial burden to underserved communities when FEMA (arbitrarily in our view) designates what we consider to be emergency work, to be instead permanent work. A clear definition that recognizes the unique nature of power restoration should be developed and applied consistently by FEMA. We recommend that FEMA re-adopt the definition it has used consistently in the past (i.e., the emergency period ends for eligible utilities when power is restored to all meters that can receive power).

To be fair, we have seen some improvement in streamlining by FEMA in the recent past. In order to address the chronic issue of numerous duplicative requests for documents from Applicants and Subapplicants, FEMA developed the portal system under which, theoretically, Applicants and SubApplicants provide one set of documents that is available to all FEMA staff. While this system has slowed the request for duplicate documents, there are still instances of FEMA staff not being aware of or unable to access documents that have been submitted through the portal. In addition, FEMA should work to create a notification system within the portal so that subrecipients are alerted when additional requests for information have been uploaded. This will prevent the subrecipient from missing crucial updates in the portal.

5. *Are there any FEMA regulations and/or policies that create duplication, overlap, complexity, or inconsistent requirements within FEMA programs, other DHS components, or any other Federal Government agency that impact equity, resilience to the effects of climate change, and/or environmental justice? If so, what are they and how can they be improved or updated to meet the required objectives of equity, resiliency, and environmental justice?*

Response to General Question 5:

There are instances where FEMA procurement policies and requirements conflict with the U.S. Department of Agriculture's Rural Utilities Service (RUS) procurement policies and requirements. Many rural electric cooperatives are RUS borrowers and can find themselves caught between the two agencies to the extent they apply for Public Assistance funds post-disaster. We recommend that FEMA engage with RUS to harmonize the two sets of requirements. NRECA and its members stand ready to facilitate such a discussion.

6. *Does FEMA currently collect information, use forms, or require documentation that impede access to FEMA programs and/or are not effective to achieve statutory, regulatory, and/or program objectives? If so, what are they and how can FEMA revise them to reduce burden, save time or costs, increase simplification and navigability, reduce confusion or frustration, and increase equity in access to FEMA programs and achieving statutory and/or regulatory objectives?*

Response to General Question 6:

The fact that many electric cooperatives hire consultants to help with the preparation of FEMA forms speaks volumes about the complexity of FEMA forms and documentation requirements. We understand FEMA's obligation to be a good steward of federal dollars but recommend that FEMA balance that obligation with simpler, more accessible forms and procedures. In addition, given the uniqueness and complexity of an electric utility system, FEMA should explore creating documentation specific to electric utilities which will streamline and expedite the process. NRECA and its members stand ready to collaborate with FEMA on the creation of such documentation.

7. *Are there FEMA regulations and/or policies that have been overtaken by technological developments? Can FEMA leverage new technologies to modify, streamline, or do away with existing regulatory and/or policy requirements? If so, what are they and how can FEMA use new technologies to achieve its statutory and regulatory objectives in light of the Executive orders cited?*

Response to General Question 7:

We are unaware of FEMA regulations or policy that have been overtaken by technological developments.

8. *Are there any FEMA regulations and/or policies that are duplicative, overlapping, or contain inconsistent requirements generally? Are there areas where FEMA's regulations create duplicative, overlapping, or difficult to navigate situations for individuals also navigating regulatory requirements of another Federal Government agency?*

Response to General Question 8:

Please see our response to General Question 5 where we recommend that FEMA work with the U.S. Department of Agriculture's Rural Utilities Service to harmonize contracting requirements of the two agencies.

9. *Are there existing sources of data that FEMA can use to evaluate the post-promulgation effects of regulations over time? Or, are there sources of data that FEMA can use to evaluate the effects of FEMA policies or regulations on equity for all, including individuals who belong to underserved communities?*

   Response to General Question 9:

   No response provided.

10. *What successful approaches to advance equity and climate resilience have been taken by State, local, Tribal, and territorial governments, and in what ways do FEMA's programs present barriers or opportunities to successful implementation of these approaches?*

    Response to General Question 10:

    No response provided.

11. *Are there FEMA regulations, programs, or processes that create barriers to mitigation, response, recovery, or resilience for a specific industry or sector of the economy, geographic location within the United States, or government type (e.g. a specific tribal or territorial government or a specific local government)?*

    Response to General Question 11:

Please see our response to General Question 1 where we discuss how the disaster declaration process has not been sufficiently updated per 2018's Disaster Relief Reform Act to give greater consideration to severe local impact or recent multiple disasters. That particular policy, or lack thereof, has created barriers to recovery in rural communities, such as the Texas communities cited in the response to the question.

Barriers to mitigation in underserved rural communities are created when FEMA does not allow access to BRIC funds by private nonprofits.

III. <u>Answers to Specific Questions</u>

1. ***Individual Assistance**: Are there regulations and/or policies that act as a barrier to people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty, inequality, and climate change?*

   Response to Specific Question 1:

No answer provided.

2. ***Public Assistance**: Are there measures FEMA could take to more effectively bolster or incentivize resilience to the impacts of climate change?*

Response to Specific Question 2:

In most cases during power restoration after a natural disaster, Public Assistance applicants are limited to building or replacing the facility to its original condition. By adopting a philosophy of "build back better", FEMA could effectively build more resilience into electric systems post disaster. We recommend that FEMA convene meetings to discuss how to streamline the hazard mitigation program so that electric cooperatives don't get caught between getting the lights back on as quickly and safely as possible, and environmental and historic preservation requirements.

3. ***National Flood Insurance Program**: Are there regulations and/or policies that disincentivize purchasing flood insurance, particularly by lower-income communities, communities of color, and Tribal communities? Are there measures FEMA could take to increase nationwide the number of flood-insured homes in the general population and particularly in lower-income communities, communities of color, and Tribal communities?*

Response to Specific Question 3:

No response provided.

4. ***Hazard Mitigation Programs**: Are there measures FEMA could take to prioritize funding to mitigate the disproportionate impact climate change has on the most vulnerable in society, particularly lower-income communities, communities of color, and Tribal communities?*

Response to Specific Question 4:

Please see our response to Specific Question 2 and General Question 1 where we discuss how providing direct access to BRIC funds to private nonprofits could deliver mitigation programs into underserved, economically challenged, rural communities.

5. ***Preparedness Grant Programs**: Are there measures FEMA could take to improve our Preparedness Grant Programs to ensure the funding provided to our State and local partners and other stakeholders addresses the domestic terrorism threats currently faced, particularly when those threats impact or*

target groups that have been historically underserved or subjected to discrimination? What should FEMA address beyond the types of activities these grants support the priority areas on which we ask our State, local, and Tribal partners and other stakeholders to focus; and the risk methodologies to use in determining how to allocate funding?

Response to Specific Question 5:

No response provided

IV. **Summary and Conclusion**

NRECA applauds FEMA's approach to advancing equity and support for underserved communities. We appreciate the opportunity to comment as well as the opportunity to have presented a summary of our comments on FEMA's stakeholder webinar on the topic. We look forward to working with FEMA to address these critical issues.

Respectfully submitted,

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