February 1, 2021

The Honorable Ann Kirkpatrick  
309 Cannon House Office Building  
Washington, D.C. 20515  

Re: Changes to FEMA Public Assistance Program per January 21, 2021 Memorandum from President Biden to the Secretary of Defense and the Secretary of Homeland Security

Dear Congresswoman Kirkpatrick:

In Section 3 of the above memorandum (enclosed herein as Attachment A), President Biden directs that the Federal Emergency Management Agency (FEMA) will make available under Category B of the [FEMA] Public Assistance [P]rogram\(^1\) such assistance as may be required by . . . local governments . . . to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants. Such assistance may include funding for the provision of personal protective equipment and disinfecting services and supplies.

This is welcome news to Pima County since, under the Trump Administration, FEMA responded to nine of its COVID-19-related Public Assistance Program claims (totaling $5,013,028.03) with an award of only $7,250. The County was thereby forced – like many other local jurisdictions throughout the U.S. – to use its Coronavirus Relief Fund allocation\(^2\) to defray the remaining balance of $5,005,778.03 in COVID-19-related expenditures. Please note that each Pima County claim to the FEMA Public Assistance Program included complete cost documentation and each cost was evaluated prior to submission for allowability in compliance with Category B Emergency Protective Measures in the FEMA Public Assistance Program Policy Guide V3.1.

Pima County began submitting COVID-19-related Public Assistance claims through the Arizona Department of Emergency Management (DEMA) starting on April 13, 2020. On July

\(^1\) The FEMA Public Assistance program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288).  
\(^2\) Coronavirus Relief Fund allocations to local governments were authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136).
1, 2020, the County was notified that FEMA was re-evaluating eligibility of COVID-19-related expenditures. Two weeks later, the County was informed that the FEMA Public Assistance Program would not reimburse costs relating to facility disinfections, food distribution, and COVID-19 testing even though the Public Assistance Program application included checkboxes for these exact expenditure types. The County pointed out this contradiction to DEMA and FEMA, but was still rebuffed. This is just one of many examples of obstacles thrown into the Public Assistance Program pipeline by FEMA in relation to Pima County’s COVID-19 reimbursement claims. Typical barriers involved FEMA staff engaging in layers and layers of review and then generating multiple requests for information (RFIs) to the County for more information regarding expenditures (even though, in many cases, this information had already been provided). In August through October 2020, FEMA RFIs began to increasingly focus on the County’s PPE reimbursement claims and to question why the County would even need to purchase PPE (e.g., “What emergency protective measure is being applied to justify the purchase of the PPE masks, gloves, gowns, coveralls, thermometers, plastic face shields, and hand sanitizers?”) After much back and forth, the FEMA Public Assistance Program declared the County’s reimbursement requests for PPE to be ineligible on October 18, 2020 and additionally stated:

**FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19. Approval of funding for the purchase of PPE is conditioned upon the Applicant meeting the following requirements prior to close-out and/or final version for expedited projects:**

1. **The Recipient, and any subrecipient funded through this and associated subgrants, must provide an internal control plan for accounting for intake, distribution, tracking, and handling of excess [sic] commodities and personal protective equipment (PPE) funded by this and associated prior subgrants for the same purpose. Handling of excess must comply with 2 CFR § 200.314 (supplies) and 2 CFR § 200.313 (equipment).**

2. **The Recipient and any subrecipient must provide the current burn rate for each identified category of PPE under this and associate subawards purchased (for example, N95 masks, surgical masks, and gowns)**

3. **The Recipient and any subrecipient must provide a current accounting of previously distributed PPE under this and associate subawards by jurisdiction or entity (i.e. by local government, hospital system, etc.)**

Even though Pima County eventually withdrew its COVID-19-related claims to the FEMA Public Assistance Program, as discussed, it is still having to respond to what it regards as an excessive administrative burden generated by the FEMA Public Assistance Program in regard to PPE. On January 22, 2021, the Arizona Department of Health Services (ADHS) informed all of its County and Tribal partners, including Pima County, that since ADHS had provided PPE to said partners and was seeking reimbursement from FEMA Public Assistance, ADHS would need all of the following data:
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- Date of PPE received by your agency (from ADHS or other agency)  
- Quantity and type of the PPE received  
- Date of PPE distributed by your agency to sub-departments or other legal entities  
- If distribution went beyond your agency, who was the final end-user (entity in receipt) of the PPE  
- Copy of the Internal control plan for intake, distribution, and handling of materials  
- For what activities was the PPE used  
  - Example: For medical response at a hospital’s COVID isolation ward  
- Please include the number of individuals using received PPE on a daily basis (for burn rate calculation)  
  - Example: Average of 7 people a day used them daily for 5 day work week for 10 weeks = Burn rate of 350 N-95 masks  
- Any remaining amounts of received PPE (not distributed or used)

The administrative burden to provide all of the above data is excessive. According to one of the leads of Pima County’s COVID-19 logistics team, two full-time employees are now needed to gather and fact-check all of this data (both historically and in the go-forward). Pima County is hopeful that in addition to the course correction President Biden provides in his January 21, 2021 memorandum relating to the FEMA Public Assistance Program and cost eligibility of, for example, PPE, that FEMA will also reduce the Public Assistance Program administrative burden relating to PPE burn rate so as to decrease the burn rate of critical public health staff time and effort as Health Departments in Arizona, with the highest COVID-19 infection rate in the world, can focus on the critical tasks of ongoing testing and vaccination.

If your staff would like more details, please contact Pima County’s Grants Management and Innovation Office Director Regina Kelly at 520.724.6679 or Regina.Kelly@pima.gov.

Sincerely,

C.H. Huckelberry  
County Administrator  
Enclosure

C: The Honorable Chair and Members, Pima County Board of Supervisors  
  Jan Lesher, Chief Deputy County Administrator  
  Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services  
  Terry Cullen, MD, MS, Public Health Director, Pima County Health Department  
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MEMORANDUM FOR THE SECRETARY OF DEFENSE THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the “Stafford Act”), and section 502 of title 32, United States Code, I hereby order as follows:

Section 1. Policy. Consistent with the nationwide emergency declaration concerning the coronavirus disease 2019 (COVID-19) pandemic on March 13, 2020, it is the policy of my Administration to combat and respond to COVID-19 with the full capacity and capability of the Federal Government to protect and support our families, schools, and businesses, and to assist State, local, Tribal, and territorial governments to do the same, to the extent authorized by law.
Sec. 2. Support of Operations or Missions to Prevent and Respond to the Spread of COVID-19. (a) The Secretary of Defense shall, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), request pursuant to 32 U.S.C. 502(f) that all State and territorial governors order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that the Federal Emergency Management Agency (FEMA) issues to the Department of Defense for the purpose of supporting State, local, Tribal, and territorial emergency assistance efforts under the Stafford Act.

(b) FEMA shall fund 100 percent of the cost of activities associated with all mission assignments for the use of the National Guard under 32 U.S.C. 502(f) to respond to COVID-19, as authorized by sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Stafford Act.

(c) This section supersedes prior Presidential Memoranda requesting the use of the National Guard to respond to the COVID-19 emergency to the extent they are inconsistent with this memorandum.

Sec. 3. Assistance for Category B Emergency Protective Measures. (a) In accordance with sections 403 (42 U.S.C. 5170b) and 502 (42 U.S.C. 5192) of the Stafford Act, FEMA shall, as appropriate and consistent with applicable law, make available under Category B of the Public Assistance program such assistance as may be required by States (including territories and the District of Columbia), local governments, and Tribal governments to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants. Such assistance may include funding for the provision of personal protective equipment and disinfecting services and supplies.

(b) FEMA shall make assistance under this section available at a 100 percent Federal cost share until September 30, 2021.

Sec. 4. Advanced Reimbursement. To make reimbursements for approved work under the Stafford Act to respond to COVID-19 available more quickly, FEMA shall expedite reimbursement for eligible emergency work projects
and, as appropriate and consistent with applicable law, provide an advance of the Federal share on a percentage of the expected reimbursement from FEMA-approved projects.

Sec. 5. One-Hundred Percent Cost Share Termination. The 100 percent Federal cost share for use of National Guard forces authorized by section 2 (b) of this memorandum shall extend to, and shall be available for, orders of any length authorizing duty through September 30, 2021.

Sec. 6. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

JOSEPH R. BIDEN JR.
February 1, 2021

The Honorable Kyrsten Sinema
317 Hart Senate Office Building
Washington, D.C. 20510

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MEMORANDUM FOR THE SECRETARY OF DEFENSE THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States

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(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

JOSEPH R. BIDEN JR.
February 1, 2021

The Honorable Raúl M. Grijalva
1511 Longworth House Office Building
Washington, D.C. 20515

Re: Changes to FEMA Public Assistance Program per January 21, 2021 Memorandum from President Biden to the Secretary of Defense and the Secretary of Homeland Security

Dear Congressman Grijalva:

In Section 3 of the above memorandum (enclosed herein as Attachment A), President Biden directs that the Federal Emergency Management Agency (FEMA) will make available under Category B of the [FEMA] Public Assistance Program¹ such assistance as may be required by . . . local governments . . . to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants. Such assistance may include funding for the provision of personal protective equipment and disinfecting services and supplies.

This is welcome news to Pima County since, under the Trump Administration, FEMA responded to nine of its COVID-19-related Public Assistance Program claims (totaling $5,013,028.03) with an award of only $7,250. The County was thereby forced – like many other local jurisdictions throughout the U.S. – to use its Coronavirus Relief Fund allocation² to defray the remaining balance of $5,005,778.03 in COVID-19-related expenditures. Please note that each Pima County claim to the FEMA Public Assistance Program included complete cost documentation and each cost was evaluated prior to submission for allowability in compliance with Category B Emergency Protective Measures in the FEMA Public Assistance Program Policy Guide V3.1.

Pima County began submitting COVID-19-related Public Assistance claims through the

¹ The FEMA Public Assistance program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288).
² Coronavirus Relief Fund allocations to local governments were authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136).
Arizona Department of Emergency Management (DEMA) starting on April 13, 2020. On July 1, 2020, the County was notified that FEMA was re-evaluating eligibility of COVID-19-related expenditures. Two weeks later, the County was informed that the FEMA Public Assistance Program would not reimburse costs relating to facility disinfections, food distribution, and COVID-19 testing even though the Public Assistance Program application included checkboxes for these exact expenditure types. The County pointed out this contradiction to DEMA and FEMA, but was still rebuffed. This is just one of many examples of obstacles thrown into the Public Assistance Program pipeline by FEMA in relation to Pima County’s COVID-19 reimbursement claims. Typical barriers involved FEMA staff engaging in layers and layers of review and then generating multiple requests for information (RFIs) to the County for more information regarding expenditures (even though, in many cases, this information had already been provided). In August through October 2020, FEMA RFIs began to increasingly focus on the County’s PPE reimbursement claims and to question why the County would even need to purchase PPE (e.g., “What emergency protective measure is being applied to justify the purchase of the PPE masks, gloves, gowns, coveralls, thermometers, plastic face shields, and hand sanitizers?”) After much back and forth, the FEMA Public Assistance Program declared the County’s reimbursement requests for PPE to be ineligible on October 18, 2020 and additionally stated:

FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19. Approval of funding for the purchase of PPE is conditioned upon the Applicant meeting the following requirements prior to close-out and/or final version for expedited projects:

1. The Recipient, and any subrecipient funded through this and associated subgrants, must provide an internal control plan for accounting for intake, distribution, tracking, and handling of excess commodities and personal protective equipment (PPE) funded by this and associated prior subgrants for the same purpose. Handling of excess must comply with 2 CFR § 200.314 (Supplies) and 2 CFR § 200.313 (Equipment).
2. The Recipient and any subrecipient must provide the current burn rate for each identified category of PPE under this and associate subawards purchased (for example, N95 masks, surgical masks, and gowns).
3. The Recipient and any subrecipient must provide a current accounting of previously distributed PPE under this and associate subawards by jurisdiction or entity (i.e. by local government, hospital system, etc.)

Even though Pima County eventually withdrew its COVID-19-related claims to the FEMA Public Assistance Program, as discussed, it is still having to respond to what it regards as an excessive administrative burden generated by the FEMA Public Assistance Program in regard to PPE. On January 22, 2021, the Arizona Department of Health Services (ADHS) informed all of its County and Tribal partners, including Pima County, that since ADHS had provided PPE to said partners and was seeking reimbursement from FEMA Public Assistance, ADHS would need all of the following data:
Congressman Grijalva
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- Date of PPE received by your agency (from ADHS or other agency)
- Quantity and type of the PPE received
- Date of PPE distributed by your agency to sub-departments or other legal entities
- If distribution went beyond your agency, who was the final end-user (entity in receipt) of the PPE
- Copy of the Internal control plan for intake, distribution, and handling of materials
- For what activities was the PPE used
  - Example: For medical response at a hospital’s COVID isolation ward
- Please include the number of individuals using received PPE on a daily basis (for burn rate calculation)
  - Example: Average of 7 people a day used them daily for 5 day work week for 10 weeks = Burn rate of 350 N-95 masks
- Any remaining amounts of received PPE (not distributed or used)

The administrative burden to provide all of the above data is excessive. According to one of the leads of Pima County’s COVID-19 logistics team, two full-time employees are now needed to gather and fact-check all of this data (both historically and in the go-forward). Pima County is hopeful that in addition to the course correction President Biden provides in his January 21, 2021 memorandum relating to the FEMA Public Assistance Program and cost eligibility of, for example, PPE, that FEMA will also reduce the Public Assistance Program administrative burden relating to PPE burn rate so as to decrease the burn rate of critical public health staff time and effort as Health Departments in Arizona, with the highest COVID-19 infection rate in the world, can focus on the critical tasks of ongoing testing and vaccination.

If your staff would like more details, please contact Pima County’s Grants Management and Innovation Office Director Regina Kelly at 520.724.6679 or Regina.Kelly@pima.gov.

Sincerely,

C.H. Huckelberry
County Administrator

Enclosure

c: The Honorable Chair and Members, Pima County Board of Supervisors
Jan Lesher, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services
Terry Cullen, MD, MS, Public Health Director, Pima County Health Department
Craig Sullivan, Executive Director, County Supervisors Association of Arizona
Michael Racy, Racy Associates, Inc.
BRIEFING ROOM

Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States

JANUARY 21, 2021 • PRESIDENTIAL ACTIONS

MEMORANDUM FOR THE SECRETARY OF DEFENSE THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the “Stafford Act”), and section 502 of title 32, United States Code, I hereby order as follows:

Section 1. Policy. Consistent with the nationwide emergency declaration concerning the coronavirus disease 2019 (COVID-19) pandemic on March 13, 2020, it is the policy of my Administration to combat and respond to COVID-19 with the full capacity and capability of the Federal Government to protect and support our families, schools, and businesses, and to assist State, local, Tribal, and territorial governments to do the same, to the extent authorized by law.
Sec. 2. Support of Operations or Missions to Prevent and Respond to the Spread of COVID-19. (a) The Secretary of Defense shall, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), request pursuant to 32 U.S.C. 502(f) that all State and territorial governors order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that the Federal Emergency Management Agency (FEMA) issues to the Department of Defense for the purpose of supporting State, local, Tribal, and territorial emergency assistance efforts under the Stafford Act.

(b) FEMA shall fund 100 percent of the cost of activities associated with all mission assignments for the use of the National Guard under 32 U.S.C. 502(f) to respond to COVID-19, as authorized by sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Stafford Act.

(c) This section supersedes prior Presidential Memoranda requesting the use of the National Guard to respond to the COVID-19 emergency to the extent they are inconsistent with this memorandum.

Sec. 3. Assistance for Category B Emergency Protective Measures. (a) In accordance with sections 403 (42 U.S.C. 5170b) and 502 (42 U.S.C. 5192) of the Stafford Act, FEMA shall, as appropriate and consistent with applicable law, make available under Category B of the Public Assistance program such assistance as may be required by States (including territories and the District of Columbia), local governments, and Tribal governments to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants. Such assistance may include funding for the provision of personal protective equipment and disinfecting services and supplies.

(b) FEMA shall make assistance under this section available at a 100 percent Federal cost share until September 30, 2021.

Sec. 4. Advanced Reimbursement. To make reimbursements for approved work under the Stafford Act to respond to COVID-19 available more quickly, FEMA shall expedite reimbursement for eligible emergency work projects
and, as appropriate and consistent with applicable law, provide an advance of the Federal share on a percentage of the expected reimbursement from FEMA-approved projects.

Sec. 5. One-Hundred Percent Cost Share Termination. The 100 percent Federal cost share for use of National Guard forces authorized by section 2 (b) of this memorandum shall extend to, and shall be available for, orders of any length authorizing duty through September 30, 2021.

Sec. 6. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

JOSEPH R. BIDEN JR.