

MEMORANDUM

Agenda Item No. 11(A)(17)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: September 3, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution urging Congress and
FEMA to clarify FEMA's
procedures for deobligation of
previously approved disaster
relief funds
Resolution No. R-785-14

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Sally A. Heyman, Vice Chair Lynda Bell and Commissioner Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney

RAC/cp



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 11(A)(17)

Veto _____

9-3-14

Override _____

RESOLUTION NO. R-785-14

RESOLUTION URGING CONGRESS AND FEMA TO
CLARIFY FEMA'S PROCEDURES FOR DEOBLIGATION OF
PREVIOUSLY-APPROVED DISASTER RELIEF FUNDS

WHEREAS, natural disasters, and in particular hurricanes and tropical storms, are a significant threat to Miami-Dade County; and reference; and

WHEREAS, Miami-Dade County is susceptible not only to wind damage, but also water damage from storm surge and flooding given that elevations average only about six feet above sea level; and

WHEREAS, the Robert T. Stafford Disaster Relief Act provides a safety net nationally by providing federal reimbursement for disaster relief projects undertaken by local governments that have been approved by the Federal Emergency Management Agency within the United States Department of Homeland Security (FEMA); and

WHEREAS, since 2010, FEMA has aggressively sought to recover and deobligate (also known as clawback) previously-approved funding for disaster relief projects distributed to local governments across the United States; and

WHEREAS, deobligation can lead to the required repayment of such funds by states, counties, cities, and other entities; and

WHEREAS, in Fiscal Year 2013, FEMA deobligated over \$800 million from previously-approved project funding for various state and local governments and other entities; and

WHEREAS, FEMA has deobligated over \$40 million in funds for previously-approved disaster relief projects in the State of Florida related to relief efforts within the last decade; and

WHEREAS, FEMA has attempted to deobligate over \$14 million in funds for previously-approved disaster relief projects within Miami-Dade County; and

WHEREAS, Miami-Dade County government itself is not one of the entities subject to deobligation, but the Public Health Trust, Miami-Dade Public Schools, colleges and universities and a number of cities and not-for-profit organizations all within Miami-Dade County are subject to deobligation by FEMA pursuant to the attached list; and

WHEREAS, the FEMA deobligation process is complicated and places short timelines on local governments to produce project documents that can be up to seven or more years old, or face deobligation; and

WHEREAS, federal law requires FEMA to rule on appeals from deobligation of funding within 90 days, but FEMA often does not meet this deadline, in some cases failing to take action on appeals for 18 months or more; and

WHEREAS, requiring hospitals, school districts, local governments and not-for-profit organizations to repay funding that FEMA has deobligated could result in severe hardships to these entities; and

WHEREAS, during meetings in July, the National Association of Counties (NACO) adopted an emergency resolution urging FEMA to address policies related to deobligation of approved disaster-relief funds, a copy of which is attached and incorporated by reference; and

WHEREAS, the NACO FEMA deobligation emergency resolution was sponsored by Commissioner Bryan Desloge of Leon County (Tallahassee), Florida and Commissioners Sally Heyman and Audrey Edmonson; and

WHEREAS, it was cosponsored by dozens of County Commissioners from throughout the United States; and

WHEREAS, the National Homeland Security Consortium (NHSC) also identified the FEMA Deobligation issue as one of its priorities at its recent quarterly meeting in Chicago; and the Florida Association of Counties has formed a task force to address the FEMA deobligation issue; and

WHEREAS, this Board would like to urge Congress and FEMA to clarify FEMA's deobligation process,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges Congress and FEMA to clarify FEMA's deobligation procedures to ensure that state local governments and other entities, such as the Public Health Trust, Miami-Dade Public Schools, colleges and universities, not-for-profit organizations and a number of cities within Miami-Dade County, are provided a reasonable timeframe to respond to FEMA information requests and to ensure that FEMA takes timely action on appeals by local governments of funding deobligation actions by FEMA.

Section 2. Directs the Clerk of the Board to transmit certified copies of this resolution to the members of the Florida Congressional Delegation, the Secretary of the United States Department of Homeland Security, the Administrator of FEMA, and the Executive Directors of the National Association of Counties, the National League of Cities, the Florida Association of Counties, the Florida League of Cities and the Miami-Dade League of Cities.

Section 3. Directs the County's federal lobbyists to advocate for the clarification of FEMA procedure as set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2014 Federal Legislative Package to include this item

and to include this item in the 2015 Federal Legislative Package when it is presented to the Board.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Sally A. Heyman, Vice Chair Lynda Bell and Commissioner Audrey M. Edmonson. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Lynda Bell** and upon being put to a vote, the vote was as follows:

		Rebeca Sosa, Chairwoman	aye
		Lynda Bell, Vice Chair	aye
Bruno A. Barreiro	aye	Esteban L. Bovo, Jr.	aye
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Sen. Javier D. Souto	aye	Xavier L. Suarez	aye
Juan C. Zapata	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of September, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

JMM

Jess M. McCarty

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DR	Event Name	County	Subgrantee Name	Subgrantee Classification	Total to be Repaid
1609	H. Wilma	Miami-Dade	ASPIRA of Florida, Inc.	Other	\$ (58,195.00)
1609	H. Wilma	Miami-Dade	Association for Retarded Citizens, South Florida	Other	\$ (47,874.66)
1602	H. Katrina	Miami-Dade	Aventura, City of	City	\$ (23,873.43)
1609	H. Wilma	Miami-Dade	Aventura, City of	City	\$ (73,870.66)
1609	H. Wilma	Miami-Dade	Borinquen Health Care Center, Inc.	PNP	\$ (63,012.27)
1609	H. Wilma	Miami-Dade	Coral Gables, City of	City	\$ (163,491.87)
1609	H. Wilma	Miami-Dade	East Ridge Retirement Village, Inc.	Other	\$ (115,263.30)
1609	H. Wilma	Miami-Dade	Florida Memorial College	Non-Critical PNP	\$ (277,197.59)
1602	H. Katrina	Miami-Dade	Hialeah, City of	City	\$ (110,106.70)
1609	H. Wilma	Miami-Dade	Hialeah, City of	City	\$ (2,193,392.80)
1602	H. Katrina	Miami-Dade	Hialeah, City of	City	\$ (103,979.05)
1609	H. Wilma	Miami-Dade	Miami-Dade College	College	\$ (542.92)
1609	H. Katrina	Miami-Dade	Miami Gardens, City of	City	\$ (17,978.20)
1602	H. Katrina	Miami-Dade	Miami-Dade County Public Schools	Public School District	\$ (1,217,021.37)
1609	H. Wilma	Miami-Dade	North Miami, City of	City	\$ (79.56)
1609	H. Wilma	Miami-Dade	Opa-Locka, City of	City	\$ (241,171.03)

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DR	Event Name	County	Subgrantee Name	Subgrantee Classification	Total to be Repaid
1561	H. Jeanne	Miami-Dade	Public Health Trust	Non-Critical PNP	\$ (1,485,463.95)
1602	H. Katrina	Miami-Dade	Public Health Trust	Non-Critical PNP	\$ (1,649,581.17)
1609	H. Wilma	Miami-Dade	Public Health Trust	Non-Critical PNP	\$ (2,943,692.78)
3259	TS Rita (EM)	Miami-Dade	Public Health Trust	Non-Critical PNP	\$ (765,286.86)
1602	H. Katrina	Miami-Dade	Roman Catholic Archdiocese of Miami		\$ (174,467.60)
1602	H. Katrina	Miami-Dade	South Miami, City of	City	\$ (3,105.88)
1609	H. Wilma	Miami-Dade	St. Thomas University	Critical PNP	\$ (872,240.12)
1306	H. Irene	Miami-Dade	Sweetwater, City of	City	\$ (81,497.94)
1345	S.F. Floods	Miami-Dade	Sweetwater, City of	City	\$ (1,937,095.35)
1609	H. Wilma	Miami-Dade	The ARC of South Florida (DBA) Association for Retarded Citizens, S.F.	Non-Critical PNP	\$ (47,874.66)
					<u>\$ (14,667,356.72)</u>

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6 **EMERGENCY RESOLUTION**
7

8
9 **Resolution Urging FEMA to Address Policies re:**
10 **Deobligation of Approved Disaster-Relief Funds**
11

12 **Issue:** Since 2010, the Federal Emergency Management Agency (FEMA) has aggressively
13 sought to recover and deobligate (clawback) previously-approved recovery funds distributed to
14 local governments by FEMA through the Robert T. Stafford Disaster Relief Act. The process
15 has created growing uncertainty in counties' abilities to accept disaster-relief funds.
16

17 **Proposed Policy:** NACo urges the federal government to clarify the process whereby FEMA can
18 declare that funds distributed to local governments and approved by FEMA for disaster relief
19 efforts are deobligated; so as to ensure that:

- 20 1. The deobligation process includes a reasonable timeframe for counties to respond to
21 information requests, and
22 2. FEMA makes timely decisions on appeals filed by counties that face the potential
23 rescission of previously appropriated federal funds.
24

25 **Background:** The Robert T. Stafford Disaster Relief Act provides a safety net for all Americans,
26 regardless of the state in which they reside, by providing federal reimbursement of FEMA-
27 approved disaster-relief projects. Natural disasters can occur in every area of the country and the
28 ability of the federal government to fund recovery projects through reimbursements is crucial to
29 allowing counties to provide assistance to residents in times of disaster. In Fiscal Year 2013,
30 Congress appropriated over \$7 billion to FEMA to distribute to projects approved through the
31 Robert T. Stafford Act. In the same year, FEMA deobligated over \$800 million from previously-
32 approved FEMA projects. In only the first three quarters of Fiscal Year 2014, FEMA has
33 already deobligated over \$700 million in previously-approved projects. In some instances,
34 individual counties could be responsible for the repayment of millions of dollars that they spent
35 on projects designed to help their residents recover from natural disasters.
36

37 FEMA funding for flood damage in Iowa and Florida provide good examples. FEMA approved
38 funding for designated disaster relief projects following flooding in Iowa in 2008 that caused
39 nearly \$10 billion in damages. As of January 2013, they had deobligated numerous disaster-
40 relief projects related to the flood damage. In one instance, this led to a lawsuit against FEMA
41 seeking recovery of the funds. Similarly, counties and municipalities in Florida are facing a
42 deobligation bill of upwards of \$40 million from projects approved to assist recovery from
43 Hurricane Wilma in 2005.
44

1 The FEMA process for deobligation of funds is complicated. The process typically results in
2 FEMA asking counties to provide back-up documents within only a few days for projects that
3 can be seven years old or older. Failure to meet these short deadlines can result in FEMA
4 deobligating funds. The deobligation process places counties in a precarious position when
5 accepting FEMA funds for disaster-relief projects because counties can never be sure that
6 approved funding will not be deobligated at some future date.

7
8 In contrast, FEMA does not appear to hold itself to the same standard. Specifically, federal
9 regulations allow local governments to appeal FEMA decisions, and FEMA is required to render
10 an opinion on the appeal within 90 days. However, in some instances, as is the case with Collier
11 County (Naples), FL, FEMA has not taken action on an appeal it has had for nearly 18 months.
12 The double standard and its resulting delays causes prolonged fiscal uncertainty for counties
13 awaiting a decision as to whether they will have to return recovery funds to the federal
14 government. This delay can cause a resort to the courts, which can result in reduced payouts for
15 projects that should not be deobligated. The uncertainty surrounding the process places counties
16 in danger of having to balance the needs of their residents in emergencies and the future burdens
17 caused by deobligation.

18
19 **Fiscal/Urban/Rural Impact:** Natural disasters can affect both urban and rural areas, but have a
20 disproportionate effect on rural populations and the ability for rural counties to provide disaster-
21 relief assistance is crucial. The certainty afforded by an improved FEMA process would allow
22 all counties, both rural and urban, to provide residents with relief without the uncertainty of their
23 funding being deobligated. Such certainty would result in a positive fiscal impact as well as a
24 more predictable recovery process with clear and unambiguous policies and regulations on the
25 front end. Such certainty also would eliminate the potential punitive effect on the back end and
26 would allow counties to avoid locking up funds to satisfy future expected deobligations and the
27 costs associated with appealing the deobligations.

28
29 **Sponsors:** Commissioner Bryan Desloge, Leon County, Florida; Commissioner Sally Heyman,
30 Miami-Dade County, Florida; Commissioner Audrey Edmonson, Miami-Dade County, Florida;
31 Commissioner Linda Langston, Linn County, Iowa; Commissioner Sallie Clark, El Paso County,
32 Colorado; Supervisor Liz Archuleta, Coconino County, Arizona; Commissioner Kay Cashion,
33 Guilford County, North Carolina; and Commissioner Chris Rodgers, Douglas County, Nebraska;
34 Commissioner John Martin, Garfield County, Colorado; Commissioner Welton Caldwell, Lake
35 County, Florida; Commissioner Gregg Goslin, Cook County, Illinois; Judge David Hudson,
36 Sebastian County, Arkansas; Supervisor John Miller, Black Hawk County, Iowa; Commissioner
37 Judy Shiprack, Multnomah County, Oregon; Commissioner Audrey Nixon, Lake County,
38 Illinois; Commissioner Nancy Schouweiler, Dakota County, Minnesota; Supervisor Roger
39 Bradstret, Madison County, New York; Commissioner Bronwyn Asplund-Walsh, Merrimack
40 County, New Hampshire; Supervisor Daniel Degar, Madison County, New York; Commissioner
41 Peggy Littleton, El Paso County, Colorado; Councilmember Kathy Lambert, King County,
42 Washington.