

PUBLICATION

Sanctuary Jurisdiction Policy Could Impact Disaster Recovery

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On January 25, 2017, President Trump issued Executive Order 13768, "Enhancing Public Safety in the Interior of the United States." The full implications of this broadly written Executive Order are not yet known; however, it could have unanticipated consequences on how states, local governmental entities and agencies, and even some private non-profit entities respond to, and recover from, natural disasters.

The stated purpose of Executive Order 13768 is to "direct executive departments and agencies to employ all lawful means to enforce the immigration laws of the United States." Among other things, it specifically states that any state, or any political subdivision of a state, that willfully refuses to comply – a "Sanctuary Jurisdiction" – will not be eligible to receive federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary of Homeland Security. The Order directs the Secretary, "in his discretion and to the extent consistent with law," to designate Sanctuary Jurisdictions. But it is not yet clear what is intended by the Executive Order, how broadly it may be applied or how the "law enforcement" exception may be interpreted.

When a large disaster overwhelms the resources of a state and the impacted local governments, the governor of the impacted state must request that the president declare an emergency or major disaster in order to receive FEMA disaster assistance. FEMA reviews the governor's request and transmits it to the president with a recommendation, but, ultimately, whether a state receives an approved declaration is wholly within the discretion of the president. Further, even when a declaration is approved, FEMA's decision to provide funding to any specific applicant for disaster assistance – local governments, state agencies, non-profit entities and even individuals – is discretionary. The statute and regulations say that FEMA "may," but is not required to, provide supplemental federal grant assistance reimbursing disaster expenses such as debris removal; life-saving emergency protective measures; the repair, replacement or restoration of disaster-damaged facilities; and associated hazard mitigation measures.

Given this legal framework, the Executive Order signals that the President may decide not to declare disasters in states that the Secretary designates as Sanctuary Jurisdictions. Further, FEMA decisions to obligate funding reimbursing eligible disaster expenses of any designated Sanctuary Jurisdiction may be subject to the Executive Order – even for disasters declared years ago. FEMA grants are technically made to state governments managing subgrants to local and non-profit grant recipients, so the prohibition could extend to private non-profit entities that are eligible for federal disaster grants (including electric cooperatives, hospitals and other entities that provide essential services) when located in a state designated a Sanctuary Jurisdiction. Indeed, the prohibition regarding federal grants in designated jurisdictions could conceivably impact disaster funding that has been approved and obligated but not yet paid, or even affect FEMA's ability to obligate additional funds to reimburse actual costs which have exceeded initial obligated grant funds based on cost estimates.

It is not yet clear how the Secretary of Homeland Security will define Sanctuary Jurisdictions, and how FEMA might apply the Executive Order in approving new funding for pending projects. Thus, predicting the full impact of this Executive Order on disaster assistance is still speculative.

Any entity potentially impacted should watch these developments very closely.

If you have questions about the specific items covered by this alert, or would like to discuss FEMA's disaster assistance programs generally, please contact [Ernest B. Abbott](#), [Wendy Huff Ellard](#) or any of the members of our [Disaster Recovery and Government Services Team](#).