Talking Points – Security Deposits

Background:

- While responding to Hurricane Sandy, FEMA staff in New York and New Jersey reported that applicants were experiencing hardships in using their financial temporary housing assistance (rental assistance) because they could not afford the security deposits required to rent an apartment.

- Historically, FEMA has not provided financial assistance for security deposits without requiring disaster survivors to ultimately reimburse FEMA for the assistance.

- Regulatory language at 44 CFR § 206.117(b)(1)(i)(D) states that FEMA may only pay security deposits in "extraordinary circumstances" and that such payments must be returned to FEMA before or at the time that assistance ends.

Legal Opinion:

- After consulting with OCC, FEMA has determined that financial assistance for security deposits may be provided to disaster survivors who are otherwise eligible for rental assistance under 408(c)(1)(A) of the Stafford Act.

- In 2006, Congress passed the Post-Katrina Emergency Management Reform Act (PKEMRA), which amended the Stafford Act. In section 689d of PKEMRA, Congress specifically added "security deposits" to the list of costs that are to be included in the calculation of rental assistance.

- The Stafford Act now requires that the amount of rental assistance provided "shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or unit installation not provided directly by the President." (408(c)(1)(A)(ii) of the Stafford Act)

    - FEMA has interpreted "security deposits" to include up-front payments required to cover potential damage caused by individuals or pets.

- As the regulatory language at 44 CFR § 206.117(b)(1)(i)(D) is no longer rooted in relevant statutory authority and contradicts the language of the Stafford Act, the regulatory provision at 44 CFR § 206.117(b)(1)(i)(D) may be considered null.

Future Implications:

- In all disasters declared for Individual Assistance for Hurricane Sandy and all future major disasters, security deposits should be considered allowable costs.

- Applicants who are otherwise eligible and can demonstrate they used a portion of their rental assistance toward security deposits will be eligible for continued rental assistance.

- Applicants may utilize up to one month of their rental assistance, based on the U.S. Department of Housing and Urban Development's Fair Market Rent rate, toward a security deposit.

- Applicants will not have to reimburse FEMA for any rental assistance used toward a security deposit.