



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAY 17 2018

The Honorable Mary Fallin
Co-Chair
Governor of Oklahoma
Oklahoma City, OK 73105

The Honorable Dan Malloy
Co-Chair
Governor of Connecticut
Hartford, CT 06106

Dear Governor Fallin and Governor Malloy:

During our phone call on April 23, 2018, Governor Fallin asked for a letter addressing the legality of using title 32, U.S. Code, to fund governors' use of their National Guard to respond to catastrophic disasters.

In coordination with the Office of the DoD General Counsel, I have confirmed that the Department is not authorized by law, and Congress does not appropriate funding to the Department, to fund the governors' use of their National Guard to support their State's response to disasters or support of other States' disaster responses pursuant to an interstate mutual aid and assistance agreement such as the Emergency Management Assistance Compact (EMAC).

In enacting the Stafford Act, the Congress assigned the responsibility to support State and interstate disaster responses to the Federal Emergency Management Agency (FEMA). Congress also appropriates funds to the FEMA Disaster Relief Fund (DRF) to reimburse the States, usually on a Federal-State cost share basis, for using their State's resources, including the National Guard, to support State and interstate disaster response activities.

The Secretary of Defense may, with the consent of the governors concerned, authorize a title 32, U.S. Code, duty status for National Guard personnel activated to perform Department of Defense missions in support of FEMA mission assignments. Such activations are consistent with the law, the National Response Framework, the Department's policy, and the 2010 *Joint Action Plan for Developing Unity of Effort*. This is the legally available process and mechanism for activating National Guard personnel in a title 32, U. S. Code, duty status to respond to catastrophic disasters.

I appreciate that governors face fiscal challenges when responding to disasters and in support of current interstate mutual aid and assistance agreements. As agreed at the last plenary meeting, DoD is prepared to support the State-Federal working group and its efforts to develop recommendations for improving the nation's preparedness for and response to catastrophic disasters.

Thank you for your continued leadership on the Council of Governors.

