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Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding

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Keith Bea
Specialist, American National Government
Government and Finance Division

Prepared for Members and Committees of Congress

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Summary

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue major disaster or emergency declarations in response to catastrophes that overwhelm state and local governments. Such declarations result in the distribution of a wide range of federal aid to individuals and families, certain nonprofit organizations, and public agencies. Congress appropriates money to the Disaster Relief Fund (DRF) for disaster assistance authorized by the Stafford Act, which is administered by the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security (DHS). Appropriations to the DRF remain available until expended.

At the conclusion of the 109th Congress the Senate inserted Stafford Act amendments into the FY2007 DHS appropriations legislation (H.R. 5441, enacted as P.L. 109-295). These amendments, Subtitle E of Title VI (120 Stat. 1444 - 1457), expand FEMA's authority to expedite emergency assistance to stricken areas, impose new planning and preparedness requirements on federal administrators, and increase federal assistance to victims and communities. The amendments, most of which took effect on the date of enactment (October 4, 2006), are summarized in CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*.

Actions taken by the administration to implement the significantly revised Stafford Act will continue to be the focus of oversight hearings and investigations conducted by the 110th Congress. Lessons learned from the investigations into the response to and continuing recovery from Hurricanes Katrina and Rita will likely shape congressional perspectives and oversight questions. Issues that might be explored include implementation of the FEMA reorganization legislation, funding options for emergency management, catastrophic disaster preparedness, and hazard mitigation policy.

This report will be updated as warranted by events or legislative action.

Contents

List of Tables

Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding

Overview of the Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue major disaster, emergency, and fire management declarations, which in turn enable federal agencies to provide assistance to states overwhelmed by disasters.[1] Through an amended executive order, President Bush delegated to the Secretary of the Department of Homeland Security (DHS) responsibility for administering most, but not all, of the provisions of the Stafford Act.[2] Prior to this action the authority to implement Stafford authority had been delegated to the Director of the Federal Emergency Management Agency (FEMA).[3] Since March 1, 2003, FEMA has been part of DHS.

Stafford Act disaster assistance is provided through funds appropriated to the Disaster Relief Fund (DRF). Federal assistance supported by DRF money is used by states, localities, and certain non-profit organizations to provide mass care, restore damaged or destroyed facilities, reduce the impact of future disasters, clear debris, and aid individuals and families with uninsured needs, among other activities. In calendar year 2006 President Bush issued 52 major disaster, 5 emergency, and 86 fire management declarations.[4]

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[1] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. "States" include U.S. territories and the District of Columbia. In addition to the assistance authorized by the Stafford Act, a wide range of disaster aid is provided by other federal agencies under statutory authority that specifically refers to disaster assistance, as well as under general assistance provisions. For information on the range of federal programs see CRS Report RL31734, *Federal Disaster Recovery Programs: Brief Summaries*, by Mary Jordan.

[2] U.S. President George W. Bush, "Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Sec. 52, Feb. 28, 2003.

[3] U.S. President Jimmy Carter, "Federal Emergency Management," E.O. 12148, July 20, 1979.

[4] U.S. Federal Emergency Management Agency, *2006 Federal Disaster Declarations*, at [http://www.fema.gov/news/disasters.fema?year=2006#em], visited Jan. 16, 2007.

The 2006 Amendments.[5] The 109th Congress amended the Stafford Act through the Post-Katrina Emergency Management Reform Act of 2006 (Title VI, P.L. 109-295) and the Security and Accountability for Every Port Act of 2005, known as the SAFE Port Act (P.L. 109-347). The amendments expanded the authority of FEMA to provide assistance, resolved questions about the duties and powers of administration officials, and imposed requirements on federal officials to ensure that effective pre-disaster preparation actions would be taken. The Stafford Act amendments were developed based on investigations conducted into the response to Hurricane Katrina and the perceived need for legal remedies to make Stafford Act programs more flexible and responsive to events of a catastrophic nature. While expanding federal assistance authorities, the amendments maintain state, local, and individual emergency management responsibility and accountability. In short, the Post-Katrina Act expands the President's federal disaster assistance authority, but leaves the basic tenets of the Stafford Act (such as Presidential discretion, need for state requests, restrictions on eligibility) unchanged.

The more significant changes may be summarized as follows:

- **Expedited federal assistance.** The President is now authorized to support precautionary evacuation measures, accelerate federal emergency response and recovery aid, and provide expedited federal assistance (coordinated with the state to the extent possible) in the absence of a specific request from state officials.[6]

- **Aid to individuals with special needs.** Federal assistance to and accommodation for individuals with disabilities will be a new focus with the inclusion in the Stafford Act of the definition of "individual with a disability" from the Americans With Disabilities Act of 1990.[7] Also, durable medical equipment, such as that needed by the disabled, may be provided,[8] and the FEMA Administrator must develop guidelines concerning the accommodation of individuals with disabilities with regard to emergency facilities and equipment.[9] The amendments also prohibit discrimination toward the disabled, those with special needs, and those with limited proficiency in the

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[5] Francis McCarthy, Government and Finance Division, was the primary author of information included in this section. For more detailed information on the Stafford Act amendments adopted by the 109th Congress see CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, coordinated by Keith Bea.

[6] P.L. 109-295, §681, 120 Stat. 1444, which amended Sec. 402 and 502 of the Stafford Act.

[7] P.L. 109-295, §688(3), which amended Sec. 102, 120 Stat. 1448 of the Stafford Act.

[8] P.L. 109-295, §689(b), which amended Sec. 403, 120 Stat. 1449 of the Stafford Act.

[9] P.L. 109-295, § 689(a), 120 Stat. 1448-1449. For more information see CRS Report RS22254, *The Americans With Disabilities Act and Emergency Preparedness and Response*, by Nancy Lee Jones.

English language.[10] To assist the latter segment of disaster victims, the FEMA Administrator must ensure that information is made available to those with limited English proficiency, and must develop and maintain an informational clearing house of model language assistance as well as best practices for the state and local governments working with these individuals.[11] Also, the Pets Evacuation and Transportation Standards Act of 2006 authorizes grants to states for the improvement of emergency shelters to accommodate pets and service animals.[12]

- **Expanded assistance to disaster victims.** The President is now authorized to provide transportation assistance to those displaced from their residences, including that assistance needed to move among alternative temporary shelters or to return to their original residence; and provide case management services to state, local, or qualified private organizations that provide assistance to victims.[13]

- **Housing assistance.** Seven new provisions expand the federal housing assistance to be made available to victims. First, in order to be considered eligible for housing assistance, victims of major disasters or emergencies who are disabled now must be unable to access or inhabit their homes.[14] Prior to enactment of the 2006 amendments the statute did not differentiate disabled access from that experienced by other disaster victims. Second, alternative housing sites provided to victims by the federal government must meet physical accessibility requirements.[15] Third, the amendments eliminated the statutory ceilings on financial aid to be provided for housing repair and replacement,[16] but did not eliminate the overall cap of $25,000 that may be provided to each individual or household under Section 408.[17] Fourth, the amendments authorize the President to provide semi-permanent housing where no alternatives

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[10] P.L. 109-295, §689a, 120 Stat. 1449.

[11] P.L. 109-295, §689e, new Stafford Act Sec. 616, 120 Stat. 1452. Note that Sec. 616 refers to the FEMA "Director," not Administrator, the title created in the 2006 amendments.

[12] P.L. 109-308, Sec. 3, Stafford Act amended Sec. 611, 120 Stat. 1725.

[13] P.L. 109-295, §689f, new Stafford Act Sec. 425 and Sec. 426, 120 Stat. 1452-1453. Note that the SAFE Ports Act also added a new Sec. 425 to the Stafford Act ("Essential Service Providers").

[14] P.L. 109-295, §689(c), Stafford Act amended Sec. 408, 120 Stat. 1449.

[15] P.L. 109-295, §689(c), Stafford Act amended Sec. 408, 120 Stat. 1449.

[16] P.L. 109-295, §686, Stafford Act amended Sec. 408(c), 120 Stat. 1448.

[17] The Stafford Act provides for annual cost of living adjustments to the funding ceiling. Effective October 1, 2006, the maximum amount that may be provided to an individual or household under the IHP authority is $28,200. See 71 *Federal Register* 59514.

exist.[18] Fifth, the statute includes as newly eligible housing-assistance costs both utility costs (excluding telephone service) and security deposits.[19] Sixth, the disposal of temporary housing units (generally referred to as "FEMA trailers") is to be coordinated with the Department of the Interior or other federal agencies to facilitate the transfer of the units to tribal governments.[20] Seventh, the amendments established a demonstration project, the Individuals and Households Pilot Program, to increase the use of existing rental housing to provide temporary housing for victims of major disasters. Through the pilot program, which expires December 31, 2008, the Administrator is to provide for the repair and improvement of multi-family rental properties in disaster areas to increase the rental stock available to disaster victims in the immediate area.[21]

- **Public assistance (PA) to state and local governments.** State or local governments or eligible private nonprofit-facility owners may apply for federal assistance to build a new facility in a different location if all parties determine that a damaged facility should not be repaired or replaced. Such assistance, known as the "in-lieu" contribution (a grant made in-lieu of replacing or repairing a facility that existed before the disaster), has been authorized since 1974 and consists of PA grants based on the federal estimate of the cost of repair or replacement.[22] A 2006 amendment in the SAFE Ports Act deletes the clause that authorized an in-lieu grant for 90% of the federal share of the estimate of repairing or replacing the facility solely in areas with unstable soil. Now all stricken state and local governments may apply for a 90% in-lieu grant.[23] The SAFE Ports Act also authorizes expedited payments for debris removal to state or local governments or to owners of qualified private nonprofit facilities.[24] In addition, the SAFE Ports Act amends the Community Disaster Loan (CDL) provisions by authorizing loans to local governments (capped at $5 million) that, because of a major disaster, suffer significant losses in tax revenue.[25] Another PA change is included in the Post-Katrina Reform Act. The statute authorizes the President, through the FEMA Administrator, to conduct a pilot

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[18] P.L. 109-295, §685, Stafford Act amended Sec. 408(c), 120 Stat. 1447.

[19] P.L. 109-295, §689d, Stafford Act amended Sec. 408, 120 Stat. 1452.

[20] P.L. 109-295, §689k, 120 Stat. 1456.

[21] P.L. 109-295, § 689i, 120 Stat. 1454.

[22] P.L. 93-288, 88 Stat. 154, amended by P.L. 100-707, 102 Stat. 4699. In 1988 Congress reduced the in-lieu grant from 90% to 75% of the federal estimate and retained the 90% level solely for areas with unstable soil (P.L. 106-390, 114 Stat. 1563).

[23] P.L. 109-347, §609, Stafford Act amended Sec. 406, 120 Stat. 1942.

[24] P.L. 109-347, §610, Stafford Act amended Sec. 407, 120 Stat. 1942-1943.

[25] P.L. 1090-347, §608, 120 Stat. 1942. For background on CDL see CRS Report RL33174, *FEMA's Community Disaster Loan Program*, by Nonna A. Noto.

program of incentives for local and state government involvement in debris removal and the acceleration of repair work.[26]

- **Assistance to nonprofit organizations.** Three significant changes have been adopted regarding the federal aid provided to private nonprofit organizations affected by a major disaster. First, the statute authorizes the President, within stated constraints, to define facilities that provide "essential services of a governmental nature to the general public."[27] These provisions, similar to those in FEMA regulations, establish eligibility to museums, zoos, performing arts facilities, community arts centers, and other facilities that "provide health and safety services of a governmental nature" as long as they provide "essential services of a governmental nature to the general public," as defined by the President.[28] Third, the amendments added the word "education" to the listing in the section of the law that defines critical services. Through this change, private nonprofit education organizations may apply directly for a FEMA grant without having to apply for a Small Business Administration loan.[29]

- **Hazard mitigation.** Section 404 of the Stafford Act authorizes the Hazard Mitigation Grant Program (HMGP), the source of grants to states in which major disasters have been declared.[30] These funds must be used for activities that prevent future disasters or reduce their impact if they cannot be prevented. The Post-Katrina Act adjusts the percentage amounts for HMGP awards by establishing a scale that authorizes a higher percentage (15% of the total Stafford Act assistance in a state) for major disasters in which no more than $2 billion is provided, 10% for assistance that ranges from more than $2 billion to $10 billion, and 7.5% for major disasters that involve Stafford Act assistance of more than $10 billion to $35.3 billion.[31]

- **Administrative changes.** The 2006 amendments authorize the President to appoint one Federal Coordinating Officer (FCO) for a multi-state event, in addition to deputy FCO's as needed.[32] Traditionally, one FCO has been named for each separate disaster declaration in each respective state. The statute also amends the Stafford Act by requiring that the President designate a Small State and Rural Advocate in FEMA to ensure that rural community needs are met in the declaration process and to help small states prepare

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[26] P.L. 109-295, §689j, 120 Stat. 1455.

[27] P.L. 109-295, § 688(1), Stafford Act amended Sec. 102(9), 120 Stat. 1448.

[28] Ibid. The regulations are found at 44 CFR §206.221(e)(7).

[29] P.L. 109-295, § 689h, Stafford Act amended Sec. 406, 120 Stat. 1453.

[30] 42 U.S.C. 5170c.

[31] P.L. 109-295, §684, Stafford Act amended Sec. 404, 120 Stat. 1447.

[32] P.L. 109-295, §687, Stafford Act amended Sec. 302, 120 Stat. 1448.

declaration requests, among other duties.[33] Other administrative changes concern the authority and capabilities of organizations charged with the response to the major disaster site. The amendments authorize the President to establish at least three national response teams and others as deemed necessary (including regional response teams), and requires that FEMA team members possess essential capabilities, training skills, and equipment.[34] In addition, the SAFE Ports Act amends the Stafford Act by adding a new definition, "essential service providers," defined as persons affiliated with municipal governments or private entities who will help restore essential services to a stricken area. Such workers are not to be impeded when they seek access to a disaster site.[35]

Overview of Stafford Act Declarations

Major disaster and emergency declarations are two of the five types of actions that may be taken under authority of the Stafford Act.[36] The other three include fire management declarations, the provision of defense resources before a major disaster is declared, and the decision to pre-position supplies and resources.[37]

Prior to a Disaster. Three types of declarations (or commitments) may be made under Stafford Act authority before a catastrophe occurs. First, at the request of a governor, the President may direct the Department of Defense (DOD) to commit resources for emergency work essential to preserve life and property in "the immediate aftermath of an incident" that may result in the declaration of a major

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[33] P.L. 109-295, §689g, new Stafford Act Sec. 326, 120 Stat. 1453.

[34] P.L. 109-295, §633, Stafford Act amended Sec. 303, 120 Stat. 1421. Note that the statute refers to the "Director" of FEMA, whereas the position is identified elsewhere as "Administrator."

[35] P.L. 109-347, §607, new Stafford Act Sec. 425, 120 Stat. 1941. Note that the Post Katrina Act also added a new Sec. 425 ("Transportation Assistance") to the Stafford Act.

[36] The text of the statute and pertinent regulations are presented in CRS Report RL33090, *Robert T. Stafford Disaster Relief and Emergency Assistance Act: Legal Requirements for Federal and State Roles in Declarations of an Emergency or a Major Disaster*, by Elizabeth B. Bazan.

[37] Whereas the first two pre-event actions are specifically authorized by the Stafford Act, the pre-event actions are inferred from general authority. Following an investigation into the response to Hurricane Andrew in 1992 the General Accounting Office (now the Government Accountability Office) reported that "Current federal law governing disaster response does not explicitly authorize federal agencies to undertake preparatory activities before a disaster declaration by the President, nor does it authorize FEMA to reimburse agencies for such preparation, even when disasters like hurricanes provide some warning that such activities will be needed." U.S. General Accounting Office, *Disaster Management: Improving the Nation's Response to Catastrophic Disasters* (Washington: July 23, 1993), p. 3.

disaster or emergency (discussed below).[38] The statute does not define the term "incident." According to regulations, upon receiving a gubernatorial request for such assistance, the FEMA Associate Director may determine that DOD aid is necessary to save lives and protect property and may authorize such assistance.[39]

Second, the Stafford Act authorizes the President to provide fire management assistance in the form of grants, equipment, personnel, and supplies to supplement the resources of communities when fires on public property or on private forests or grasslands threaten destruction that might warrant a major disaster declaration.[40] Implementation of this authority, which has been delegated to FEMA officials, requires that a gubernatorial request be submitted while an uncontrolled fire is burning. To be approved, state applications must demonstrate that either of the two cost thresholds established by FEMA through regulations has been reached.[41] The thresholds involve calculations of the cost of an individual fire or those associated with all of the fires (declared and non-declared) in a state each calendar year.[42] FEMA officials determine whether a fire management assistance declaration will be issued.[43]

Third, when a situation threatens human health and safety, and a disaster is imminent but not yet declared, the Secretary of DHS may pre-position employees and supplies. DHS monitors the status of the situation, communicates with state emergency officials on potential assistance requirements, deploys teams and resources to maximize the speed and effectiveness of the anticipated federal response and, when necessary, performs preparedness and preliminary damage assessment

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[38] The statute reads "During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act...the Governor of the state in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days." 42 U.S.C. 5170b(c).

[39] 44 CFR 206.35(c).

[40] Sec. 420 of the Stafford Act, 42 U.S.C. 5187.

[41] Regulations are found at 44 CFR 204.1 et seq.

[42] 44 CFR 204.51.

[43] 44 CFR 204.24.

activities.[44] A new and related provision authorizes the FEMA Administrator to provide evacuation preparedness assistance to non-federal officials.[45]

After a Catastrophe Occurs. The Stafford Act authorizes the President to issue two types of declarations — major disaster and emergency — after an incident overwhelms state and local resources. Before either of the declarations may be issued, certain steps specified in statute and in regulations must be undertaken.

Damage Assessments and Declaration Criteria. The Stafford Act, like its antecedent statutes, requires that federal aid be made available to help state governments overwhelmed by the consequences of a catastrophe.[46] For all major disasters, and for emergencies that do not primarily involve federal responsibility and authority, governors of the affected states must request the presidential declaration after certifying that necessary action has been taken under state law; damage estimates have been made; state and local resources have been committed; and, cost sharing requirements of the statute will be met.[47]

The collection of information on damages involves a collaborative effort involving FEMA staff, state officials, and personnel from affected local governments. Teams of assessors conduct a Preliminary Damage Assessment (PDA) to estimate the degree of damage and potential costs resulting from the disaster event.[48] The assessment is broken down into categories (such as number of homes damaged or destroyed, and number of public facilities damaged or destroyed) that correspond to

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[44] This activity is not explicitly set out in the Stafford Act. The *National Response Plan*, developed by DHS pursuant to congressional mandate, sets forth the following guidance: "When advance warning is possible, DHS may deploy liaison officers and personnel to a state emergency operations center (EOC) to assess the emerging situation." U.S. Department of Homeland Security, *National Response Plan* (Washington: 2004), p. 91.

[45] P.L. 109-295, §632, 120 Stat. 1421.

[46] See 42 U.S.C. 5121 (a)(b), "It is the intent of Congress, by this chapter, to provide an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibilities ..." Also, 42 U.S.C. 5170 (procedure for a major disaster declaration) and 42 U.S.C. 5191(a) (procedure for an emergency declaration) require that a gubernatorial request for Stafford Act assistance "be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance is necessary."

[47] Regulations provide specific requirements for the type of information that must be compiled when requests for emergency (44 CFR 206.35) or major disaster (44 CFR 206.36) declarations are submitted. Emergencies that primarily involve matters of federal jurisdiction or authority do not require a gubernatorial request, but the President is required (42 U.S.C. 5191(b)) to "consult the Governor of any affected state, if practicable."

[48] PDAs are not always required. Incidents that result, or are expected to result in unusually catastrophic damages, do not require the completion of damage assessments; see 44 CFR 206.36(d). For example, President Bush issued a major disaster declaration on August 29, 2005 for the state of Louisiana even before Hurricane Katrina's damage was assessed. The major disaster declaration is available at [http://www.fema.gov/news/dfrn.fema?id=4506], visited Dec. 29, 2005.

the broad categories of disaster relief and assistance that FEMA provides through the Individuals and Households Program (IHP) or Public Assistance (PA) programs authorized by the Stafford Act.

Information in the PDAs is used to determine whether a declaration will be issued and, if one is issued, whether IHP or PA programs, or both, will be provided to the areas (generally counties, parishes, and independent cities) included in the declaration. The following subsections summarize the criteria used to issue major disaster and emergency declarations, as well as the types of assistance authorized to be provided under the Stafford Act. Neither the Stafford Act nor implementing regulations provide for a congressional role in the declaration process.[49]

Major Disaster Declarations. After receiving a request from the governor of an affected state for a major disaster declaration, the President may take one of three possible actions: issue a major disaster declaration, an emergency declaration, or decline the request.[50] Major disaster declarations may be issued after a natural catastrophe "(including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought)" or, "regardless of cause, [after a] fire, flood or explosion."[51]

Regulations further specify the factors considered by FEMA in evaluating a gubernatorial request for a major disaster declaration. The factors considered to determine whether federal PA assistance is needed include an assessment of the per capita impact of the disaster within affected states;[52] insurance coverage in force; the presence and impact of hazard mitigation measures; the cumulative impact of disasters over the previous year; and, whether federal aid authorized by statutes other than the Stafford Act would better meet the needs of stricken areas.[53] Factors

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[49] For regulations on the request and declaration process, see 44 CFR §§206.35-206.39. The gubernatorial request for a declaration is forwarded to the President through FEMA officials. Only the President may issue an emergency declaration.

[50] For criteria considered in the declaration of a major disaster, see 44 CFR 206.48. The gubernatorial request for a declaration is forwarded to the President through FEMA officials. Only the President may issue a major disaster declaration.

[51] 42 U.S.C. 5122(2).

[52] Each year FEMA issues a notice that identifies the threshold to be used as one factor to be considered in the determination of whether PA or IA or both will be made available after a major disaster declaration has been issued. The regulations establish a minimum threshold of $1 million in PA damages for each state; see 44 CFR 206.48(a)(1). Major disasters declared on or after October 1, 2005, would generally be expected to reach the threshold of $1.18 per capita for PA assistance to be authorized; see 70 FR 58734. However, the statewide threshold is not the sole factor. Assessments consider concentrations of damages in local jurisdictions even if statewide damages are not severe. Countywide impacts from major disasters declared on or after October 1, 2005, would generally be expected to reach the threshold of $2.94 per capita for PA assistance to be authorized; see 70 FR 58734.

[53] Citations to emergency assistance statutory authorities administered by agencies other than the Department of Homeland Security are identified in Table 2 of CRS Report RL33064, *Organization and Mission of the Emergency Preparedness and Response*

(continued...)

considered to determine whether federal IHP assistance is needed include concentration of damages; number of injuries, deaths, or the extent to which essential services are disrupted; the impact on special populations that require higher levels of assistance; the extent to which voluntary agencies are able to meet the needs of victims; insurance coverage; and, measurements of needs such as disaster housing needs approved, number of homes destroyed or damaged, financial assistance required, and others.[54]

Emergency Declarations. The declaration process for emergencies is similar to that used for major disasters, but the criteria (based on the definition of "emergency") are less specific.[55] Whereas all major disaster declarations require a gubernatorial request and, generally, findings and certifications as summarized above, emergency declaration requirements are less rigorous. For example, the President may issue an emergency declaration without a gubernatorial request if primary responsibility rests with the federal government.[56] Also, specific thresholds or calculations of past averages are not considered, but FEMA officials do assess whether "all other resources and authorities available to meet the crisis are inadequate" before recommending that the President issue an emergency declaration.[57]

Types of Assistance and Eligibility

The Stafford Act identifies the universe of eligible applicants (e.g., states, local governments, owners of certain private nonprofit facilities, individuals, or families). However, not all persons or entities affected by a catastrophe are eligible for Stafford Act assistance even if the President issues a declaration. FEMA officials determine the need for assistance after a major disaster or emergency declaration is issued. Aid is provided only to those persons or entities determined to need the assistance. For example, a family with adequate insurance and alternative housing options might not

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[53] (...continued)
Directorate: Issues and Options for the 109th Congress, by Keith Bea.

[54] Refer to the table in regulations (44 CFR 206.48(b)(6)) for computed averages of individual assistance needed for small, medium and large states, based upon losses incurred from 1994 to 1999.

[55] A Stafford Act "emergency" is "any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States." 42 U.S.C. 5122(1).

[56] "The President may exercise any authority vested in him by ... this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected state, if practicable. The President's determination may be made without regard to subsection (a) of this section." 42 U.S.C. 5191(b).

[57] 44 CFR 206.37(2).

be considered eligible to receive financial aid. A unit of local government that suffers damages to some facilities, but not to the extent considered necessary pursuant to FEMA regulations and guidelines, might not receive funds to rebuild infrastructure.

The type of assistance made available varies from one disaster to another and among eligible applicants within a state, commensurate with decisions by FEMA officials on the extent of damage and the eligibility of applicants. For instance, under a major disaster declaration, local jurisdictions with large numbers of damaged or destroyed residences might be eligible for assistance under the IHP program, whereas those with severely damaged infrastructure but relatively few damaged homes might be eligible only for assistance under the PA program. Similarly, if a local government had extensive debris in public rights-of-way due to a disaster, but very little damage to public facilities, a determination might be made to provide assistance only for debris removal activities under the PA program. On the other hand, areas severely devastated by a catastrophe are often eligible for both IHP and PA.

The Stafford Act authorizes the President to make the initial determination of eligibility for federal relief and recovery assistance through the issuance of either a major disaster or emergency declaration. The following subsections summarize the types of assistance authorized under each.

Major Disaster Assistance. A major disaster declaration authorizes the President to direct that the following types of federal disaster assistance be provided:

- *general federal assistance* for technical and advisory aid and support to state and local governments to facilitate the distribution of consumable supplies;[58]

- *essential assistance* from federal agencies to distribute aid to victims through state and local governments and voluntary organizations, perform life- and property-saving assistance, clear debris, and use resources of the Department of Defense before a major disaster or emergency declaration is issued;[59]

- *hazard mitigation* grants to reduce risks and damages that might occur in future disasters;[60]

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[58] Sec. 402 of the Stafford Act, 42 U.S.C. 5170a.

[59] Sec. 403 of the Stafford Act, 42 U.S.C. 5170b. FEMA has established two categories of public assistance (PA) emergency work under Section 403 authority — debris removal (Category A) and emergency protective measures to save lives and property (Category B).

[60] Sec. 404 of the Stafford Act, 42 U.S.C. 5170c. The Hazard Mitigation Grant Program (HMGP), authorized by Section 404 of the Stafford Act (42 U.S.C. 5170c), funds activities that reduce the impacts of future disasters. A second hazard mitigation program, the Pre-Disaster Mitigation (PDM) program, is authorized in Title II of the Stafford Act (42 U.S.C. 5133). These two Stafford Act provisions are discussed in the "Hazard Mitigation" section of this CRS report.

- *federal facilities* repair and reconstruction;[61]

- *repair, restoration, and replacement of damaged facilities* (the Public Assistance (PA) program) owned by state and local governments, as well as private nonprofit facilities that provide essential services, or contributions for other facilities or hazard mitigation measures in lieu of repairing or restoring damaged facilities;[62]

- *debris removal* through the use of federal resources or through grants to state or local governments or owners of private nonprofit facilities;[63]

- *assistance to individuals and households* (the Individual and Household Program (IHP)), including financial grants to rent alternative housing, direct assistance through temporary housing units (mobile homes), limited financial assistance for housing repairs and replacement, and financial assistance for uninsured medical, dental, funeral, personal property, transportation, and other expenses (referred to as Other Needs Assistance (ONA);[64]

- *unemployment assistance* to individuals unemployed as a result of the major disaster, for up to 26 weeks, as long as they are not entitled to other unemployment compensation or credits[65]

- *grants to assist low-income migrant and seasonal farmworkers* to be provided by the Secretary of Agriculture (total limited to $20 million annually) "where the Secretary determines that a local, state or

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[61] Sec. 405 of the Stafford Act, 42 U.S.C. 5171.

[62] Sec. 406 of the Stafford Act, 42 U.S.C. 5172. Private nonprofit facilities that provide "critical services" (power, water, sewer, wastewater treatment, communications, and emergency medical care) may receive grants. Owners of other facilities that provide essential, but not critical services, must first apply for a Small Business Administration (SBA) loan, and may then receive grants if they are ineligible for such a loan or require aid above the amount approved by the SBA. The permanent work supported under this authority has been designated by FEMA as follows: "Category C," roads and bridges; "Category D," water control facilities; "Category E," buildings and equipment; "Category F," utilities; and "Category G," parks, recreational facilities, and other items. For more information see U.S. Department of Homeland Security, Federal Emergency Management Agency, "Public Assistance Guide - FEMA Publication 322," available at [http://www.fema.gov/government/grant/pa/paguided.shtm], visited Aug. 1, 2006.

[63] Sec. 407 of the Stafford Act, 42 U.S.S. 5173. Debris removal grants authorized by Section 407 are provided to states and are separate from the Category A debris removal PA assistance authorized by Section 403.

[64] Sec. 408 of the Stafford Act, 42 U.S.C 5174. [Sec. 409, food coupons and distribution, was redesignated Sec. 412.]

[65] Sec. 410 of the Stafford Act, 42 U.S.C. 5177. For background information see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker.

national emergency or disaster" has resulted in a loss of income or inability to work;[66]

- *food coupons and food distribution* for low-income households unable to purchase nutritious food;[67]
- *food commodities* for emergency mass feeding;[68]
- *legal services* for low-income individuals;[69]
- *crisis counseling assistance and training* grants for state and local governments or private mental health organizations to provide associated services or to train disaster workers;[70]
- *community disaster loans* to local governments that lose tax or other revenues needed for governmental services;[71]
- *emergency communications* to establish temporary communications during "or in anticipation of an emergency or major disaster,";[72] and,
- *emergency public transportation* to provide transportation to essential places.[73]

Each major disaster declaration specifies the type of incident covered, the time period covered, the types of disaster assistance available, the units of local government (generally counties, parishes, and independent cities) included in the declaration, and the name of the federal coordinating officer. As the effects of the catastrophe subside over time, the initial major disaster declaration may be amended to modify the types of assistance to be provided and the areas (generally counties) included in the major disaster declarations.

Emergency Declaration Assistance. Considerably less assistance is authorized to be provided under an emergency declaration in comparison to that authorized for a major disaster declaration. The types of *emergency assistance* authorized to be provided under an emergency declaration include the following:

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[66] 42 U.S.C. 5177a.

[67] Sec. 412 of the Stafford Act, 42 U.S.C. 5179.

[68] Sec. 413 of the Stafford Act, 42 U.S.C. 5180.

[69] Sec. 415 of the Stafford Act, 42 U.S.C. 5182.

[70] Sec. 416 of the Stafford Act, 42 U.S.C. 5183.

[71] Sec. 417 of the Stafford Act, 42 U.S.C. 5184. Information on this program is provided in CRS Report RL33174, *FEMA's Community Disaster Loan Program*, by Nonna A. Noto and Steven Maguire.

[72] Sec. 418 of the Stafford Act, 42 U.S.C. 5185.

[73] Sec. 419 of the Stafford Act, 42 U.S.C. 5186.

- activities to support state and local emergency assistance;
- coordination of disaster relief provided by federal and non-federal organizations;
- technical and advisory assistance to state and local governments;
- emergency assistance through federal agencies;
- debris removal through grants to state and local governments (Section 407);
- grants to individuals and households for temporary housing and uninsured personal needs (Section 408); and
- distribution of medicine, food, and consumables.[74]

Funding Caps and Cost Shares

In addition to their utility in determining whether a stricken state is eligible for Stafford Act assistance, PDAs facilitate the negotiation of contractual agreements between FEMA and the state. These agreements set forth the terms under which FEMA will obligate and distribute disaster assistance funding to the state for redistribution to eligible applicants (e.g., local governments).

Statutory Funding Limitations. Pursuant to Stafford Act requirements, federal assistance is limited either to a fixed dollar amount or to a percentage of eligible costs. All parties use the agreements to establish federal, state, and local cost shares pursuant to statutory requirements and allowances. The Stafford Act stipulates that the minimum federal assistance for certain eligible activities "shall be not less than 75% of the eligible cost of such assistance."[75] Other provisions specify ceilings, rather than floors, for federal aid. Specific cost share requirements set out in the statute include the following.

- *Essential assistance:* The federal share must be at least 75% of eligible costs.[76]
- *Repair, restoration, or replacement of public facilities:* In general, at least 75% of eligible costs must be provided, but this threshold

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[74] Section 502 of the Stafford Act, 42 U.S.C. 5192.

[75] The Stafford Act, as amended (P.L. 100-707), Sections 403(b), 403 (c)(4), 406(b), and 407(d). The same 75% minimum is also applicable to presidential emergency declarations (42 U.S.C. 5193, Section 503(a)). Neither the statute nor the regulations impose a formula for the distribution of cost-share requirements among state and local governments. Some states, for example, have established a 15% local and a 10% state match combination; other states equally divide the required cost share — 12.5% each for the state and for each local government that receives Stafford Act assistance.

[76] 42 U.S.C. 5170b(b).

may be reduced to 25% if a facility has previously been damaged by the same type of disaster and mitigation measures have not been adopted to address the hazard. Federal aid generally will be reduced if facilities in flood hazard areas are not covered by flood insurance. Cost estimation requirements must be adhered to, but the President may approve costs that exceed the regulatory limitations. "Associated costs," such as the employment of national guard forces, use of prison labor, and base and overtime wages for employees and "extra hires," may be reimbursed. The President must notify congressional committees with jurisdiction before providing more than $20 million to repair, restore, or replace facilities.[77]

- *Debris removal:* The federal share must be at least 75% of the eligible costs.[78]

- *Individual and household assistance:* Temporary housing units may be provided directly to victims of disasters, without charge, for up to 18 months, unless the President extends the assistance "due to extraordinary circumstances." Fair market rents may be charged at the conclusion of the 18 month period.[79] The federal share of housing assistance is 100%. Financial assistance is also provided for uninsured medical, dental, funeral, transportation, personal property, and other needs; the federal share for this assistance is capped at 75% of eligible costs; the total amount that may be provided under the Individuals and Household Program (IHP) cannot exceed $25,000 (adjusted annually).[80]

- *Small project grants:* If the estimated costs of assistance for facility repair or replacement (Section 406), essential assistance (Section 403), debris removal (Section 407), or emergency assistance

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[77] 42 U.S.C. 5172. The statute provides that "base and overtime wages for the employees" and hires of state and local governments may be reimbursed under this authority (42 U.S.C. 5172(a)(2)(C). Regulations, however, specify that "straight- or regular-time salaries and benefits" of permanent employees (referred to as "force account labor costs") are not eligible if they are engaged in activities associated with essential assistance (Sec. 403) or debris removal grants (Sec. 407). See 44 CFR 206.228(a)(4).

[78] 42 U.S.C. 5173(d).

[79] 42 U.S.C. 5174(c). Financial assistance to build permanent or "semi-permanent" housing may be provided in insular areas outside the continental United States "and in other locations" where temporary housing alternatives are not available.

[80] 42 U.S.C. 5174. FEMA has established a limitation of $27,200 for IHP assistance to an individual or household in each emergency or major disaster declared after October 1, 2005. See 70 FR 58735. (The 2006 amendments deleted the caps on housing repair and replacement.)

(Section 502) do not exceed $35,000 (adjusted annually), a small project grant may be issued.[81]

- *Emergency declaration assistance:* Federal assistance must constitute at least 75% of eligible costs. Expenditures made under an emergency declaration are limited to $5 million per declaration unless the President determines that there is a continuing need; Congress must be notified if the $5 million ceiling is breached.[82]

Cost Share Waivers. In instances where the state-local match is unduly burdensome due to factors such as the impact of the disaster or the fiscal condition of the state and its units of local government, the President may waive some or all of the cost-sharing requirement for PA programs. However, the President may not waive the 25% state-local requirement for assistance provided under the Individual Assistance (IA) Program, except for insular areas.[83]

Table 1 of this report indicates that the state-local match requirement has been reduced or waived for a specified period of time (usually 72 hours) for specific categories of eligible PA work. For example, in 2004, there were 16 disaster declarations for which the cost-share requirement was adjusted. For these 16 states, four were granted a cost-share ratio of 90% federal and 10% state-local match for all PA Program categories. In addition, after 12 major disasters, the President waived the entire state-local match for eligible costs incurred during a period of 72 consecutive hours, and only for eligible costs associated with debris removal and emergency protective measures activities. For the remainder of the incident (disaster) period, the state-local match was either 10% (in five cases) or 25% (in seven cases).

If a state or a local government believes that the economic impact from the disaster warrants, officials may contact FEMA to request a reduction in their portion of the federal cost-share. The regulations specify that an adjustment in the cost-share requirement may be made "whenever a disaster is so extraordinary that actual federal obligations under the Stafford Act, excluding FEMA administration cost, meet or exceed" specified thresholds.[84] (The costs incurred are based on Stafford Act obligations for the disaster and may differ from those of the preliminary damage assessment.[85]) Currently, the threshold for qualifying for a reduction of the state-local match is if recovery costs based on FEMA obligations reach or exceed $110 per

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[81] 42 U.S.C. 5189. FEMA has established a limitation of $57,500 for small project grants for major disaster or emergencies declared after October 1, 2005. See 70 FR 58735.

[82] Sec. 503 of the Stafford Act, 42 U.S.C. 5193.

[83] 48 U.S.C. 1469(a)(d). Notices published in the *Federal Register* indicate that adjustments to the IA cost-share for insular areas occurred nine times since 1997.

[84] 44 CFR 206.47(b).

[85] Due to the difficulty of conducting preliminary damage assessments immediately after a disaster occurs, it is not unusual for amendments to be made to the disaster declaration providing more assistance to affected areas once the greater degree of damage has become known and verified.

capita, based on the state population before the disaster struck.[86] In addition, if an affected area had suffered from another disastrous event within the previous 12 months, the cumulative impact of the events would also be factored into FEMA's waiver of state-local match evaluation.

[86] See 70 FR 5201.

Table 1. Stafford Act Cost-Share Adjustments After Major Disasters, 1997-2005

(Adjustments in Percentages: Federal Share/State-Local Share)

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Arkansas	1162	1997	Severe Storms, Tornadoes		100			none given	
South Dakota	1173	1997	Severe Storms, Flooding		100			none given	
North Dakota	1174	1997	Severe Storms, Flooding	90/10	100			none given	
Minnesota	1175	1997	Severe Storms, Flooding	90/10			100	23 days	
Northern Mariana Islands	1192	1997	Typhoon	90/10			90/10		90/10
Guam	1193	1997	Typhoon Paka	90/10			100	7 days	90/10
Northern Mariana Islands	1194	1997	Typhoon				100		100
Marshall Islands	1210	1998	Severe drought	90/10			90/10		
North Carolina	1240	1998	Hurricane Bonnie				100	72 hours	
Louisiana	1246	1998	Hurricane Georges				100	72 hours	
Puerto Rico	1247	1998	Hurricane Georges	90/10			90/10		
North Carolina	1292	1999	Hurricanes Floyd and Irene	90/10			100	4 days	
Arkansas	1354	2000	Severe Winter Storm		100			100 days	
Oklahoma	1355	2001	Severe Winter Storm		100			193 days	
Texas	1356	2001	Severe Winter Storm		100			182 days	
Louisiana	1357	2001	Severe Winter Storm		100			60 days	
New York	1391	2001	Terrorist Attack	100			100		
Virginia	1392	2001	Terrorist Attack	0			100		
Northern Mariana Islands	1430	2002	Typhoon Chata'an	90/10			90/10		

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Guam	1446	2002	Super Typhoon Pongsona	90/10			100		100
Northern Mariana Islands	1447	2002	Super Typhoon Pongsona	90/10			90/10		90/10
American Samoa	1473	2003	Flooding, Landslides and Mudslides	90/10			90/10		90/10
U.S. Virgin Islands	1503	2003	Flooding Rains						
American Samoa	1506	2004	Tropical Cyclone Heta	90/10			90/10		90/10
Federated States of Micronesia	1511	2004	Typhoon Sudal	90/10			90/10		
Northern Mariana Islands	1532	2004	Typhoon Tingting	90/10			90/10		
Florida	1539	2004	Tropical Storm Bonnie and Hurricane Charlie	90/10			100	72 hours	
Northern Mariana Islands	1541	2004	Super Typhoon Chaba	90/10			90/10		90/10
Florida	1545	2004	Hurricane Frances	90/10			100	72 hours	
North Carolina	1546	2004	Tropical Storm Frances				100	72 hours	
Louisiana	1548	2004	Hurricane Ivan				100	72 hours	
Alabama	1549	2004	Hurricane Ivan	90/10			100	72 hours	
Mississippi	1550	2004	Hurricane Ivan				100	72 hours	
Florida	1551	2004	Hurricane Ivan	90/10			100	72 hours	
Puerto Rico	1552	2004	Tropical Storm Jeanne				100	72 hours	
North Carolina	1553	2004	Hurricane Ivan				100	72 hours	
Georgia	1554	2004	Hurricane Ivan				100	72 hours	

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
West Virginia	1558	2004	Severe Storms, Flooding and Landslides				100	72 hours	
Florida	1561	2004	Hurricane Jeanne	90/10			100	72 hours	
American Samoa	1582	2005	Tropical Cyclone Olaf	90/10			90/10		90/10
Alabama	1593	2005	Hurricane Dennis			100		72 hours	
Mississippi	1594	2005	Hurricane Dennis			100		72 hours	
Florida	1595	2005	Hurricane Dennis			100		72 hours	
North Dakota	1597	2005	Severe Storms, Flooding			100		72 hours	
Florida	1602	2005	Hurricane Katrina			100		72 hours	
Louisiana	1603	2005	Hurricane Katrina	90/10			100	90 days	
Mississippi	1604	2005	Hurricane Katrina	90/10			100	90 days	
Alabama	1605	2005	Hurricane Katrina				100	60 days	
Texas	1606	2005	Hurricane Rita				100	34 days	
Louisiana	1607	2005	Hurricane Rita				100	34 days	
Florida	1609	2005	Hurricane Wilma				100	72 hours	
Texas	3171	2003	Emergency Declaration: Loss of Space Shuttle Columbia				100	none given	
Louisiana	3172	2003	Emergency Declaration: Loss of Space Shuttle Columbia				100	none given	
Arkansas	3215	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Texas	3216	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Tennessee	3217	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Georgia	3218	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Oklahoma	3219	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Florida	3220	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
West Virginia	3221	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
North Carolina	3222	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Utah	3223	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Colorado	3224	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Michigan	3225	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
District of Columbia	3226	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Washington	3227	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Oregon	3228	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
New Mexico	3229	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Illinois	3230	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Kentucky	3231	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Missouri	3232	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
South Carolina	3233	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
South Dakota	3234	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Pennsylvania	3235	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Kansas	3236	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Alabama	3237	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Indiana	3238	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Iowa	3239	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Virginia	3240	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Arizona	3241	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Minnesota	3242	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Nevada	3243	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Idaho	3244	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Nebraska	3245	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Connecticut	3246	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
North Dakota	3247	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
California	3248	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Wisconsin	3249	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Ohio	3250	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Maryland	3251	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Massachusetts	3252	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Montana	3253	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	

State	DR # [A]	Calendar year	Disaster Type	PA: All Cat [B]	PA Program Subdivision				IA[C]
					Cat A: Debris	Cat B: EPM	Cat A & B	Duration: Cat A or B	
Rhode Island	3255	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Maine	3256	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
New Jersey	3257	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
New Hampshire	3258	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
New York	3262	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	
Delaware	3263	2005	Emergency Declaration: Hurricane Katrina Evacuation				100	none given	

Sources: *Federal Register* online at [http://www.gpoaccess.gov/fr/index.html]; and FEMA archived disaster declarations at "Federally Declared Disasters by Calendar Year" at [http://www.fema.gov/library/drcys.shtm]. Sites visited 10/27/05-11/3/05.

[A] The DR number is a numeric identifier used by FEMA to designate each disaster event, in consecutive order, by state. For instance, Hurricane Katrina resulted in presidential disaster declarations for three states; each state received a unique DR number.

[B] Adjustments under the PA: All Cat. column refers to a cost-share arrangement for debris removal (Cat. A), emergency protective measures (Cat. B), and permanent work (Cat. C-G). However, if a 100% adjustment has been stated for either Cat. A or Cat. B or both (for a specific time frame), the PA: All Cat. adjustment level will apply for those costs covered under the 100% adjustment.

[C] An adjustment to 90% federal reimbursement with a 10% local-state share was applied only to eligible expenses under the Other Needs Assistance (ONA) grants to individual disaster victims or households in insular areas. ONA grants comprise one category of assistance under FEMA's Individual Assistance (IA) program and address hardships caused by disaster-related expenses such as medical or dental bills, and funeral expenses.

Hazard Mitigation Assistance

Section 404 Hazard Mitigation Grants. In the 1988 amendments to the Stafford Act, FEMA proposed and Congress approved a new initiative.[87] The provision, enacted as Section 404 of the Stafford Act, commonly referred to as the Hazard Mitigation Grant Program (HMGP), authorizes the President to provide hazard mitigation funding to each state that receives a major disaster declaration. Section 404 funds have been used to help communities and property owners improve buildings to withstand earthquake shaking, purchase hurricane shutters, and relocate buildings from flood-prone areas. Up to 75% of the cost of approved measures may be provided, but total federal assistance cannot exceed 7.5% of the total assistance provided under the major disaster provisions (Title IV) of the Stafford Act.

Money for HMGP derives from the Disaster Relief Fund (DRF), not from line item appropriations. The amount provided to each state is based upon the total assistance provided within each state for each major disaster declaration. The maximum contribution to be provided to each state in which a major disaster declaration is issued ranges from (1) 15% of the total aid provided under the act, if not more than $2 billion; (2) 10% if the aid totals more than $2 billion and less than $10 billion; and (3) 7.5% if the aid totals more than $10 billion and less than $35.3 billion.[88] According to FEMA data, roughly $2.5 billion was obligated from FY1989 through FY2004 under the Section 404 program, as shown in **Table 2**, below.

Table 2. Hazard Mitigation Grant Program Obligations, FY1989-FY2006
(current dollars)

Fiscal Year	Federal Share Obligations	Fiscal Year	Federal Share Obligations
1990	$841,053	1999	502,351,907
1991	14,777,850	2000	150,978,615
1992	24,245,906	2001	81,275,556
1993	12,528,275	2002	127,534,219
1994	111,508,787	2003	453,822,816
1995	97,775,338	2004	202,375,415
1996	140,448,180	2005	248,345,476
1997	577,766,630	2006	399,696,688
1998	514,727,186	**Total (all years)**	**3,660,999,897**

Source: Department of Homeland Security, Federal Emergency Management Agency, Mitigation Division, Risk Reduction Branch, Grants Data Analysis and Tools Section, Mitigation Data Warehouse, query of best available data, January 19, 2007 (trw). Data obtained by Natalie Love, Government and Finance Division, CRS.

Some information is available on the uses applicants made of HMGP funds. In evaluating data on HMGP-funded activities, authors of one study established two categories — process and project. Process activities, also referred to as "indirect

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[87] P.L. 100-707, 102 Stat. 4698

[88] 42 U.S.C. 5170c as amended by Sec. 684, P.L. 109-295, 120 Stat. 1447.

activities," were defined as those which "lead to policies, practices and projects that reduce risks."[89] Project activities involved structural changes to buildings and land.

- Process activities include measures to (1) assess hazards, risks and vulnerabilities; (2) develop ideas for projects, establish priorities, and set policies; (3) disseminate information to the public; and (4) facilitate the administrative tasks necessary to undertake projects.

- Project activities involve the use of funds and other resources to actually reduce the impact of hazards or prevent their occurrence, such as (1) elevating, acquiring and relocating structures in flood-prone areas; (2) strengthening structures to withstand earth movements or high winds; and (3) improving proper water drainage.

Table 3 provides summary information on the number of activities funded with HMGP grants, divided by process and project categories.

[89] Adapted from: National Institute of Building Sciences, Multihazard Mitigation Council, *Parameters for an Independent Study to Assess the Future Benefits of Hazard Mitigation Activities* (Washington: 2002), p. 9.

Table 3. HMGP Obligations, by Type of Activity, 1990-2004

Process/ Project	Category	Number of Projects	Obligations (nominal $)
Process	Codes, standards, ordinances, and regulations	66	$33,658,336
	Mitigation plans and studies	843	$57,869,895
	Other non-construction	96	$14,675,091
	Professional education and public awareness	210	$33,965,536
	Subtotal	1,215	$140,168,858
Project	Acquisition and relocation of real property	1,657	$1,055,324,451
	Elevation and floodproofing	268	$90,284,454
	Equipment (generators, communications, etc.)	357	$36,612,317
	Infrastructure protective measures (roads and bridges)	220	$31,478,592
	Major, minor, and localized flood control	1,071	$338,554,146
	Other flood control (dams, levees, etc.)	131	$45,567,006
	Other major structural	36	$133,195,437
	Retrofitting (seismic)	443	$715,511,772
	Retrofitting (for wind, wildfires, and safe rooms)	755	$209,137,638
	Stabilization (shoreline and landslide)	136	$16,928,918
	Utility protective measures	268	$187,730,824
	Vegetation management	144	$23,987,883
	Water and sanitary sewer system protective measures	247	$55,181,410
	Wetland restoration/creation	5	$609,946
	Subtotal	5,738	$2,940,104,794
Other	State Management Costs	586	$62,999,718
	Miscellaneous	143	$353,672,147
	Warning Systems	446	$56,106,787
	Subtotal	1,175	$472,778,652
Total		**8,128**	**$3,553,052,304**

Source: National Emergency Management Information System (NEMIS) query of best available data, December 22, 2004, presented in National Institute of Building Sciences, Multihazard Mitigation Council, *Parameters for an Independent Study to Assess the Future Benefits of Hazard Mitigation Activities* (Washington: 2002), p. 9.

Pre-Disaster Mitigation Grants. During the Clinton Administration FEMA initiated Project Impact to stimulate pre-disaster mitigation efforts.[90] Congress appropriated funds, generally $25 million per year, in the mid-1990s, to support Project Impact activities. The 105th Congress considered, but did not approve, legislation to authorize funding for pre-disaster mitigation grants.[91] The issue carried over to the 106th Congress, which approved legislation to expand federal pre-disaster mitigation assistance in order to reduce federal disaster relief costs, save lives, and protect property through enactment of the DMA of 2000.[92]

The pre-disaster mitigation (PDM) grant program established by the DMA is intended to reduce losses and suffering "resulting from natural disasters" and provide a source of funding to ensure "the continued functionality of critical services and facilities after a natural disaster."[93] Assistance is authorized to help state and local governments implement "pre-disaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the states or local governments."[94] Successful applicants must demonstrate the ability to develop "effective public-private natural disaster hazard mitigation partnerships. The legislation, according to FEMA, "emphasizes the importance of strong state and local planning processes and comprehensive program management at the state level."[95] The 109th Congress reauthorized PDM through FY2008.[96]

Funding appropriated for PDM grants remains available until expended.[97] In FY2006 Congress appropriated $50 million for PDM grants.[98] **Table 4** summarizes the funding history of the PDM program.

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[90] For background on Project Impact see U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, *Disaster Mitigation, Preparedness and Response,* hearing, 105th Cong., 2nd sess., Jan. 28, 1998 (Washington, GPO, 1988).

[91] See U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, *Federal Emergency Management Agency Reforms*, hearing, 105th Cong., 2nd sess., July 23, 1998 (Washington: GPO, 1999).

[92] Sec. 102, P.L. 106-290, 114 Stat. 1553-1557, 42 U.S.C. 5133.

[93] Sec. 101(b), P.L. 106-390, 42 U.S.C. 5133.

[94] 114 Stat. 1554.

[95] U.S. Federal Emergency Management Agency, "Hazard mitigation planning and Hazard Mitigation Grant Program," *Federal Register*, vol. 67, no. 38, Feb. 26, 2002, pp.8843-54.

[96] P.L. 109-139.

[97] See P.L. 108-334, the FY2005 Department of Homeland Security Appropriations Act, 118 Stat. 1313.

[98] U.S. Federal Emergency Management Agency,FY2006 Pre-Disaster Mitigation Program Overview: [http://www.fema.gov/pdf/government/grant/pdm/fy_2006_pdm_overview.pdf], visited Aug. 1, 2006.

Table 4. Pre-Disaster Mitigation Funding, FY2002-FY2005

(dollars in millions)

Fiscal Year	Appropriation	Amount Available	Summary of Projects, Major Uses Made of Funds
FY2002	25.0	$25.0	Mitigation planning
FY2003 [A]	150.0	94.5	Planning ($13.1), projects ($77.9), disaster resistant universities ($3.5)
FY2004	150.0	0.0	Grant competition not held
FY2005 [A]	100.0	255.0	Streamlined competitive grant program for project, planning, program support grants, and technical assistance
FY2006	50.0	50.0	Not available
Totals	**475.0**	**424.5**	

Source: DHS appropriations acts and material provided by FEMA staff to the author, Jan. 10, 2005.

[A] Of the $244 million available in FY2005, $13 million was derived from reallocated FY2003 money, $147 million from FY2004 appropriations, and $97 million in FY2005 funding. $30 million was projected to be awarded in FY2005 when environmental and historic preservation compliance reviews would be completed.[99]

Data provided by FEMA indicate that PDM funds have been roughly evenly split between process and project requests. **Table 5** presents data on the PDM funds obligated, by state, in FY2002 and FY2003. Note that tribal nations in the states receive funds directly from FEMA, not through the state in which they are located. To facilitate examination of the information, the obligations made to tribal nations are grouped within the respective state information.

[99] U.S. Federal Emergency Management Agency, FY2005 Pre-Disaster Mitigation Grants at [http://www.fema.gov/government/grant/pdm/fy05_pdm_grant_recipients.shtm], visited Aug. 1, 2006, and information provided by FEMA staff to author.

Table 5. Pre-Disaster Mitigation Grant (PDM) Obligations, by State and Activity, FY2002-FY2003

(dollars)

Grantee	Obligated Funds by Activity		Total
	Process	Project	
Alaska	$560,643	$0	$560,643
Alabama	1,471,026	5,663,527	7,134,553
Arkansas	1,300,643	4,199,260	5,499,903
American Samoa	526,996	0	526,996
Arizona (AZ)	1,189,335	3,000,000	4,189,335
AZ - Gila River Indian Community	70,979	0	70,979
AZ - Hualapai Tribe	70,113	0	70,113
California (CA)	7,564,871	2,054,968	9,619,838
CA - Coyote Valley Tribe	17,517	0	17,517
CA - Hopland Band of Pomo Indians	32,600	0	32,600
CA - La Jolla Band of Luiseno Indians	102,441	0	102,441
CA - Mooretown Rancheria	193,142	0	193,142
CA - Pechanga Band of Luiseno Mission Indians	48,938	0	48,938
CA - Smith River Rancheria	42,990	0	42,990
Colorado	710,126	0	710,126
Connecticut	578,937	0	578,937
District of Columbia	511,908	0	511,908
Delaware	517,363	0	517,363
Florida	1,576,846	7,365,396	8,942,242
Georgia	3,386,028	2,441,860	5,827,888
Guam	248,375	0	248,375
Hawaii	527,035	0	527,035
Iowa	729,380	0	729,380
Idaho (ID)	567,574	0	567,574
ID - Shoshone-Bannock Tribes	30,000	0	30,000
Illinois	957,637	1,796,862	2,754,499
Kansas (KS) - Kickapoo Tribe	67,650	0	67,650
KS - Sac and Fox Nation	50,000	0	50,000
Kentucky	865,963	0	865,963
Louisiana	803,843	18,113	821,956
Massachusetts	1,150,476	595,438	1,745,914
Maryland	698,669	0	698,669
Maine	528,535	0	528,535

Grantee	Obligated Funds by Activity		Total
	Process	Project	
Michigan (MI)	733,479	0	733,479
MI - Lac Vieux Desert Tribe	18,813	0	18,813
Minnesota (MN)	614,736	0	614,736
MN - Upper Sioux Tribe	35,493	0	35,493
Missouri	816,064	295,200	1,111,264
Mississippi Power	283,752	120,292	404,044
Mississippi	641,434	0	641,434
Montana	519,717	17,550	537,267
North Carolina	1,116,968	2,874,218	3,991,186
North Dakota (ND)	613,567	0	613,567
ND - unspecified	100,000	0	100,000
Nebraska	458,375	0	458,375
New Hampshire	923,609	0	923,609
New Jersey	725,546	1,162,923	1,888,469
New Mexico	570,656	0	570,656
Nevada	526,001	0	526,001
New York	1,172,096	0	1,172,096
Ohio	1,124,830	2,578,845	3,703,675
Oklahoma (OK)	662,504	0	662,504
OK - Citizen Potawatomi Nation	59,606	0	59,606
Oregon (OR)	1,084,581	4,207,721	5,292,302
OR - Confederated Tribes of the Umatilla Indian Reservation	111,173	0	111,173
Pennsylvania	788,895	3,000,000	3,788,895
Puerto Rico	2,935,966	0	2,935,966
Rhode Island	523,174	0	523,174
South Carolina	696,449	43,197	739,645
South Dakota (SD)	516,052	0	516,052
SD - Sisseton-Wahpeton Sioux Tribe	166,500	0	166,500
Tennessee	1,210,985	165,023	1,376,007
Texas	1,653,174	8,719,219	10,372,394
Utah	601,203	2,994,038	3,595,241
Virginia	846,875	0	846,875
U.S. Virgin Islands	500,944	0	500,944
Vermont	512,777	0	512,777
Washington (WA)	1,237,807	571,962	1,809,769
WA - Lummi Tribe	52,156	0	52,156

Grantee	Obligated Funds by Activity		Total
	Process	Project	
WA - Sauk Suiattle Indian Tribe	25,000	0	25,000
WA - Skokomish Indian Tribe	141,056	0	141,056
Wisconsin (WI)	1,032,247	689,829	1,722,076
WI - Forest County Potawatomi	68,117	0	68,117
WI - Menominee Tribe	30,000	0	30,000
WI - Sokaogon Chippewa Tribe	40,573	0	40,573
WI - St. Croix Chippewa of Wisconsin	71,295	0	71,295
West Virginia	292,778	2,743,154	3,035,932
Wyoming (WY)	534,139	1,593,515	2,127,654
WY - Wind River Indian Reservation - Northern Arapahoe Tribe and Eastern Shoshone Tribe	132,486	0	132,486
Totals	**$55,222,227**	**$58,912,110**	**$114,134,335**

Multihazard Mitigation Council Report. Pursuant to a 1999 directive from the Senate Appropriations Committee, FEMA funded "an independent study to assess the future savings from the various types of mitigation activities."[100] Published in 2005, the study concluded as follows:

> On average, a dollar spent by FEMA on hazard mitigation (actions to reduce disaster losses) provides the nation about $4 in future benefits. In addition, FEMA grants to mitigate the effects of floods, hurricanes, tornados, and earthquakes between 1993 and 2003 are expected to save more than 220 lives and prevent almost 4,700 injuries over approximately 50 years.[101]

Disaster Relief Fund

Congress appropriates money to the Disaster Relief Fund (DRF) to ensure that the federal assistance described earlier in this report is available to help individuals and communities stricken by severe disasters. Funds appropriated to the DRF remain available until expended. Such accounts are referred to as "no-year" accounts.[102] Appropriations to the DRF generally evoke little controversy. Supplemental

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[100] U.S. Congress, Senate Committee on Appropriations, *Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill, 2000*, 106th Cong., 1st sess., S.Rept. 106-161 (Washington, U.S. Govt. Print. Off., 1999), p. 103.

[101] Multihazard Mitigation Council, *Natural Hazard Mitigation Saves*, Vol 1 (Washington, National Institute of Building Sciences, 2005), p. iii. Study is available at [http://www.nibs.org/MMC/MitigationSavingsReport/Part1_final.pdf], visited Apr. 28, 2006.

[102] For background on this and other types of federal budget accounts, see CRS Report 98-410, *Basic Federal Budgeting Terminology*, by Bill Heniff Jr.

appropriations legislation is generally required each fiscal year to meet the urgent needs of particularly catastrophic disasters. Questions have been raised in the past concerning the increased cost of federal disaster assistance authorized by the Stafford Act as the categories of aid and eligibility for federal disaster assistance have expanded. For example, over the past five decades, Congress has expanded the basic authority first enacted in 1950 to include housing, grants for the repair of infrastructure, aid to individuals, loans to communities for lost revenue, and other needs.

Congress has previously explored the issue of rising federal disaster assistance costs and reliance upon supplemental appropriations.[103] As shown in **Table 6** below, DRF obligations have increased considerably since 1990 in comparison to those recorded in previous decades.

Table 6. Disaster Relief Fund, FY1989-FY2007

(millions of dollars, 2006 constant dollars)

FY	[A]Request	Total Appropriations				Outlays	
		Original	Supplemental	Nominal	Constant	Nominal	Constant
1989	200	100	[B]1,108	1,208	1,769	140	206
1990	270	98	[C]1,150	1,248	1,763	1,333	1,882
1991	270	0	0	0	0	552	751
1992	[D]184	185	3,993	[E]4,321	5,738	902	1,198
1993	292	292	[F]1,735	2,292	2,976	2,276	2,955
1994	[G]1,154	292	[H]5,117	4,935	6,273	3,743	4,758
1995	320	318	[I]2,275	3,595	4,475	2,116	2,634
1996	320	222	[I]3,171	3,497	4,271	2,233	2,727
1997	320	[J]1,320	[J]3,300	4,620	5,546	2,551	3,062
1998	[K]2,708	320	[L]1,600	1,920	2,277	1,998	2,370
1999	[M]2,566	[N]308	[O]1,806	2,344	2,744	3,746	4,385
2000	2,780	[P]2,780	0	2,780	3,190	2,628	3,015
2001	2,909	1,594	[Q, R]	5,890	6,603	3,217	3,606
2002	[S]1,369	664	[T]	12,160	13,376	3,947	4,341
2003	1,843	800	[U]1,426	[U]2,226	2,401	8,541	9,213
2004	1,956	1,800	[V]2,213	[V]4,013	4,227	3,044	3,207
2005	2,151	2,042	[V]43,091	[W]45,133	46,270	[X]11,847	[X]$12,145
2006	2,140	1,770	[W]6,000	7,770	7,770	[Y]13,919	[Y]13,919
2007	1,941	1,500	NA	NA	NA	[Y]12,610	[Y]12,339
Total	**$25,693**	**$13,628**	**$77,985**	**$90,112**	**$99,446**	**$81,343**	**$88,715**

[103] U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S.Doc. 104-4, 104th Cong., 1st sess., (Washington: GPO, 1995). The House convened a task force that issued an unpublished report. Following completion of the task force efforts, some Members introduced a concurrent resolution (H.Con.Res. 39, 104th Congress) seeking a "fundamental overhaul of federal disaster policies." See also U.S. Congress, House Committee on the Budget, Task Force on Budget Process, *Budgetary Treatment of Emergencies*, hearing, 105th Cong., 2nd sess., June 23, 1998 (Washington: GPO, 1998).

Sources: U.S. President, annual budget documents; appropriations legislation; U.S. FEMA budget justifications. Nominal amounts are the actual appropriations; constant dollar amounts based on CRS calculations in turn based on GDP (chained) price index in U.S. President (Bush), *Historical Tables, Budget of the United States Government, Fiscal Year 2005* (Washington, 2004), pp. 184-185. Table prepared by Keith Bea, Specialist in American National Government, Government and Finance Division.

[A.] Data in the request column generally represent the first budget request submitted by the Administration each year and do not include amended or supplemental requests. Notes in this column provide additional detail.

[B.] Supplemental funds were included in P.L. 101-100 (101 Stat. 640), continuing appropriations legislation enacted after Hurricane Hugo struck in Sept. 1989. According to FEMA, this amount was "referred to as a supplemental but was an increase in the original appropriation during a continuing resolution."

[C.] P.L. 101-130 (103 Stat. 775), enacted after the Loma Prieta earthquake, appropriated $1.1 billion in supplemental funding for FY1990. In addition, $50 million was appropriated in P.L. 101-302 (104 Stat. 214), dire emergency supplemental appropriations legislation. **Table 1** does not reflect a $2.5 million transfer from the President's unanticipated needs fund.

[D.] FY1992 request does not include the budget amendment of $90 million submitted by the Administration.

[E.] Appropriations for FY1992 included a $943 million dire emergency supplemental in P.L. 102-229 (105 Stat. 1701), enacted in fall 1991 after Hurricane Bob; $300 million after the Los Angeles riots and flooding in Chicago (spring 1992) in P.L. 102-302 (106 Stat. 248); and $2.893 billion in P.L. 102-368 (106 Stat. 1117) after Hurricanes Andrew and Iniki, Typhoon Omar, and other disasters.

[F.] Total for FY1993 includes the $2 billion supplemental approved after the Midwest floods in 1993 (P.L. 103-75; 107 Stat. 739).

[G.] The original FY1994 budget request was $292 million. On July 29, 1993, a supplemental request of $862 million was sent by President Clinton to Congress, largely for flood-related costs.

[H.] Supplemental appropriations for FY1994 enacted after the Northridge earthquake struck Los Angeles (P.L. 103-211; 108 Stat. 13).

[I.] Additional supplemental appropriation approved for Northridge earthquake costs (P.L. 104-19; 109 Stat. 230) for FY1995, with the same amount ($3.275 billion) reserved for a contingency fund for FY1996 (P.L. 104-19; 109 Stat. 231). However, $1 billion of the contingency fund was rescinded in FY1996 omnibus appropriations, P.L. 104-134 (110 Stat. 1321-358). In the same legislation, another $7 million was also appropriated to other FEMA accounts for costs associated with the bombing of the Alfred P. Murrah federal building in Oklahoma City (P.L. 104-134; 109 Stat. 254).

[J.] The FY1998 budget appendix (p. 1047) noted a transfer of $104 million from the disaster relief fund in FY1996. In the FY1997 appropriations act (P.L. 104-204; 110 Stat. 1321-358), $1 billion that had been rescinded in FY1996 (P.L. 104-134) was restored, and $320 million in new funds were appropriated. Supplemental appropriations of $3.3 billion were approved in P.L. 105-18 (111 Stat. 200) after flooding in the Dakotas and Minnesota, and after storms in other states were declared major disasters. The legislation specified, however, that of the total, $2.3 billion was to be available in FY1998 only when FEMA submitted a cost control report to Congress. This requirement was met, and the funding was made available in FY1998.

[K.] The FY1998 request consisted of a $320 million base amount plus $2.388 billion "to address actual and projected requirements from 1997 and prior year declarations." (*Budget Appendix FY1998*, p. 1047). Does not include $50 million requested for the DRF for mitigation activities.

[L.] Supplemental appropriations legislation (P.L. 105-174; 112 Stat. 77) for FY1998, approved for flooding associated with El Niño and other disasters.

[M.] The FY1999 request consisted of $307.8 million for the DRF and an additional $2.258 billion in contingency funding to be available when designated as an emergency requirement under the Balanced Budget Act of 1985, as amended.

[N.] The FY1999 omnibus appropriations act (P.L. 105-277; 112 Stat. 2681-579) included $906 million for costs associated with Hurricane Georges, flooding associated with El Niño, and other disasters.

[O.] Emergency supplemental appropriations for FY1999 (P.L. 106-31; 113 Stat. 73) included $900 million for tornado damages as well as $230 million for unmet needs, subject to allocation directions in the conference report (H.Rept. 106-143).

[P.] FY2000 appropriations act (P.L. 106-74, 113 Stat. 1085) included disaster relief funding as follows: $300 million in regular appropriations and $2.480 billion designated as emergency spending for costs associated with Hurricane Floyd and other disasters. In addition, the Consolidated Appropriations Act (P.L. 106-113; 113 Stat. 1501) authorized the Director of FEMA to use up to $215 million in disaster relief funds appropriated in P.L. 106-74 (113 Stat. 1047) for the purchase of residences flooded by Hurricane Floyd, under specified conditions.

[Q.] Supplemental appropriations legislation (P.L. 106-246; 114 Stat. 568) authorized that $50 million from the DRF was to be used for buyout and relocation assistance for victims of Hurricane Floyd. The act also appropriated $500 million in a separate account (P.L. 106-246; 114 Stat. 590) for claim compensation and administrative costs associated with the Cerro Grande fire that destroyed much of Los Alamos, New Mexico.

[R.] P.L. 107-38 (115 Stat. 220) appropriated $40 billion in response to the terrorist attacks of Sept. 11, 2001. Pursuant to the statute, these funds for FY2001 were allocated by the Office of Management Budget from the Emergency Response Fund (ERF). Of the total appropriated in P.L. 107-38 after the Sept. 11 attacks, $4.357 billion was allocated for FY2001 through P.L. 107-117 (115 Stat. 2338). The total available for obligation for FY2001 ($5.9 billion) taken from FEMA *Justification of Estimates, FY2003,* p. DR-2. A specific amount is not listed for supplemental funding as the Congress granted flexibility to the Administration after the terrorist attacks and did not appropriate a specific amount to the DRF.

[S.] Request for FY2002 did not include funding for the Disaster Relief Contingency Fund.

[T.] Congress appropriated a total of $7.008 billion for FY2002 in P.L. 107-117 (115 Stat. 2238) and P.L. 107-206 (116 Stat. 894) to meet additional needs associated with the terrorist attacks. Total funds available ($12.16 billion) include a transfer from TSA, $1 billion released from the Emergency Contingency Fund, and other sources. See DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2004*, p. DR-2. A specific amount is not listed for supplemental funding as the Congress granted flexibility to the Administration after the terrorist attacks and did not appropriate a specific amount to the DRF.

[U.] Includes $983.6 million in P.L. 108-69 (117 Stat. 885) and $441.7 million in P.L. 108-83 (117 Stat. 1037) to meet needs associated with tornadoes, winter storms, the recovery of wreckage of the Space Shuttle *Columbia* and other disasters. Also, funds appropriated in these measures and in the FY2004 appropriations act for DHS (P.L. 108-90; 117 Stat. 1137) have been used for costs associated with Hurricane Isabel. Total of $2.199 billion available taken from DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18.

[V.] P.L. 108-106 (117 Stat. 1209), which primarily addressed reconstruction costs in Iraq and Afghanistan, also contained an appropriation of $500 million for needs arising from disasters in fall 2003, including Hurricane Isabel and the California fires (117 Stat. 1220). Section 4002 of the act designates the funds an emergency requirement pursuant to the budget resolution adopted by Congress (H.Con.Res. 95), but the Consolidated Appropriations Act for FY2004 (Section 102(a), Division H, P.L. 108-199; 118 Stat. 454) rescinded $225 million of the $500 million appropriated in P.L. 108-106 (117 Stat. 1220). Total of $2.043 billion taken from:

DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005,* p. FEMA-18. P.L. 108-303 (118 Stat. 1124), enacted after Hurricanes Charley and Frances struck Florida, appropriated $2 billion to the DRF and gave discretion to DHS to transfer $30 million to the Small Business Administration for disaster loans. P.L. 108-324 , Division B of the Military Construction Appropriations Act for FY2005, appropriated an additional $6.5 billion to the DRF (118 Stat. 1247). Congress appropriated $10 billion in P.L. 109-61 (119 Stat. 1988), approved by Congress in a special session of the leadership and signed by the President on September 2, 2005, as an immediate response to the needs caused by Hurricane Katrina. A second supplemental for costs associated with Hurricane Katrina ($50 billion, P.L. 109-62; 119 Stat. 1990) was approved by Congress and signed by President Bush on September 8, 2005. However, $29 billion of the funds appropriated to the DRF were reallocated to other agency accounts to expedite the repair and reconstruction of federal facilities, and for other purposes (P.L. 109-148).

W. An additional $6 billion was appropriated to the DRF in P.L. 109-234, largely to address needs after Hurricanes Katrina, Rita, and Wilma.

X. As presented in DHS FY2007 congressional justification document for the DRF, page FEMA-3.

Y. Estimates.

Mission Assignments. The DRF is the source of funding for "mission assignments" made by FEMA to other federal agencies. By this mechanism the federal government is able to provide assistance after a disaster by tasking any federal agency to undertake an activity necessary to save lives, protect property, or provide other assistance authorized by the Stafford Act. Mission assignments eliminate the need for Congress to appropriate specific amounts of money to many federal agencies. Instead, this instrument enables FEMA to task and reimburse other federal agencies.

For example, FEMA's Operation Blue Roof, the program that funds the installation of blue tarps to temporarily repair damaged residential roofs, is mission assigned to the U.S. Army Corps of Engineers (USACE). The Corps of Engineers obtains and distributes the tarps, hires the contractors, and ensures that all applicable federal regulations are followed. Other activities that may fall under FEMA mission assignments to other federal agencies may include search and rescue, disease prevention and control, and health and medical support. Pursuant to the requirement in P.L. 109-62, weekly reports of mission assignments made by FEMA after the hurricanes of 2004 are provided to the Appropriations Committee and are made available on the Internet.[104]

Two of the three major channels for FEMA mission assignments do not have a state-local cost-share requirement (Technical Assistance and Federal Operations Support). Direct Federal Assistance, however, which the state must request of FEMA, has a state-local cost share component that may be waived if circumstances warrant.

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[104] U.S. House Appropriations Committee, "Hurricane Katrina Links, Weekly Report on the Allocation and Obligation of Appropriated Funds," at [http://appropriations.house.gov/_files/HurricaneKatrinaLink.htm], visited Dec. 29, 2005.

Issues for the 110th Congress

"Super Catastrophes" and the Stafford Act. At the conclusion of the 109th Congress, Members enacted significant changes to the Stafford Act in response to some of the failures and concerns evident after Hurricanes Katrina, Rita, and Wilma.[105] Congress might elect to consider the implementation of the new requirements, how federal (and non-federal) disaster response efforts can be expected to change, and whether further legislative changes are required. To a certain degree, it may be argued, the challenge rests in considering administrative issues, not federal statutory modifications. Such issues include matters such as the following:

- the challenges reported in the implementation of elements (or failure to implement elements) of the national preparedness system, notably the *National Response Plan* and the National Incident Management System (NIMS);[106]

- the capabilities and resources that underlie the operations of non-federal emergency management entities that are expected to work cooperatively with federal agencies, especially state emergency management policy,[107] charitable organizations,[108] and the National Guard;[109] and,

- the revised organization and mission of FEMA and DHS.[110]

In addition to considering the recent statutory changes, Members of Congress might evaluate the need for new statutory authority that provides for expedited

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[105] For a summary of the legislative changes see CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, by Keith Bea, Barbara L. Schwemle, L. Elaine Halchin, Francis X. McCarthy, Frederick M. Kaiser, Henry B. Hogue, Natalie Paris Love, and Shawn Reese.

[106] Background on these and other elements of the system are described in CRS Report RL32803, *The National Prepardness System: Issues in the 109th Congress*, by Keith Bea. See also the discussion of capability requirements and evaluation tools in CRS Report RL32520, *Emergency Management Preparedness Standards: Overview and Options for Congress*, by Keith Bea. Shortly after Hurricane Katrina federal administrators convened a working group to reconsider the NRP and its elements.

[107] See CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea.

[108] See CRS Report RS21058, *Combating Charitable Fraud: An Overview of State and Federal Law*, by Angie A. Welborn and Alison Muhlfeld.

[109] See CRS Report RL33095, *Hurricane Katrina: DOD Disaster Response*, by Steve Bowman, Lawrence Kapp, and Amy Belasco.

[110] See CRS Report RL33064, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109th Congress*, by Keith Bea. Legislation that would modify current organizational arrangements include bills to reestablish FEMA as an independent agency (H.R. 3656, H.R. 3659, H.R. 3685).

federal assistance and response should state government operations and essential services be interrupted or significantly disabled by a disaster. For example, legislation enacted after Hurricanes Katrina and Rita address issues that require special legislative action, beyond the standard waiver authority in the Stafford Act.[111] Such legislation includes the following:

- P.L. 109-68 provides additional funds for the Temporary Assistance for Needy Families (TANF) program and waives certain program requirements for states affected by Katrina;[112]

- P.L. 109-72 authorizes the Secretary of Labor to fund disaster relief employment grants projects outside the Hurricane Katrina disaster area in order to assist individuals who relocated to other states;[113]

- P.L. 109-73 authorizes temporary tax relief to directly and indirectly assist individuals in recovering from Hurricane Katrina;[114]

- P.L. 109-86 authorizes the Secretary of Education to waive certain requirements for the campus-based financial aid programs;[115]

- P.L. 109-82 authorizes the provision of vocational rehabilitation services to persons with disabilities affected by Hurricanes Katrina and Rita;[116] and,

- P.L. 109-91 creates a special Unemployment Trust Fund transfer from the Federal Unemployment Account (FUA) for FY2006 to the three states (Alabama, Mississippi, and Louisiana) most severely affected by Hurricane Katrina.[117]

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[111] Section 301 of the Stafford Act, 42 U.S.C. 5141, authorizes federal agency heads to waive administrative conditions for federal assistance programs. For examples of waivers granted by federal agency heads after Hurricane Katrina see CRS Report RS22253, *Regulatory Waivers and Extensions Pursuant to Hurricane Katrina*, by Curtis W. Copeland.

[112] For more information see CRS Report RS22246, *Temporary Assistance for Needy Families (TANF): Its Role in Response to the Effects of Hurricane Katrina*, by Gene Falk.

[113] For more information see CRS Report RL33084, *Unemployment and Employment Programs Available to Workers from Alabama, Louisiana, and Mississippi Affected by Hurricane Katrina*, by Julie M. Whittaker and Ann Lordeman.

[114] For more information see CRS Report RS22269, *Katrina Emergency Tax Relief Act of 2005*, by Erika Lunder.

[115] For more information see CRS Report RL33089, *Education and Training Issues Related to Major Disasters*, coordinated by Charmaine Mercer.

[116] For more information see CRS Report RL33249, *Rehabilitation Act of 1973: 109th Congress Legislation, FY2006 Budget Request, and FY2006 Appropriations*, by Scott David Szymendera.

[117] For more information see CRS Report RL33084, *Unemployment and Employment Programs Available to Workers from Alabama, Louisiana, and Mississippi Affected by* (continued...)

Expanding Eligibility. Certain private nonprofit organizations that provide essential government services receive Stafford Act assistance. Private for-profit organizations and property owners are not eligible for grants authorized by the statute — such entities generally rely on insurance or loans. The devastation caused by Hurricane Katrina to all components of many communities has revived interest in the issue of expanding eligibility for Stafford Act assistance to certain for-profit entities.

Some might contend that such an expansion would result in considerably high federal disaster relief expenditures as private, for-profit entities turn to federal grants in lieu of insurance or loans. Others contend that some of the facilities, notably educational and health care institutions, provide services comparable to those available through public or non-profit organizations.

There is precedent for the provision of such assistance. On at least two occasions, Congress appropriated funds to assist private corporations deemed to be particularly stricken after disasters — when ice storms severely affected utility companies in New England and when utility companies lost infrastructure in the terrorist attacks of 2001 in New York City. Such appropriations, however, were made outside of Stafford Act authority. A third instance involving the Texas Medical Center, however, is appropriate to an examination of this issue insofar as the Stafford Act is concerned.

Private Utilities after the 1998 Ice Storms. In the early winter months of 1998, an ice storm resulted in the destruction of electricity distribution infrastructure as heavily laden trees collapsed on miles of poles and wires.[118] Private utilities owned and maintained the infrastructure. To address concerns that the private utilities would have to pass on the costs of repairs to customers, Congress included funding in the omnibus appropriations act for FY1999 (P.L. 105-277) for the Community Development Block Grant (CDBG) program administered by the Department of Housing and Urban Development (HUD). The act directed that funds would be provided "for disaster relief, long-term recovery, and mitigation in communities affected by Presidentially-declared natural disasters designated during fiscal years 1998 and 1999."[119] According to news reports, disagreement arose between the Secretary of HUD and Members of Congress over the use of the appropriated funds because the statute did not specify how the funds would be used.[120]

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[117] (...continued)
Hurricane Katrina, by Julie M. Whittaker and Ann Lordeman.

[118] For background on the storm ,see Sen. Olympia Snowe, "The Ice Storm of 1998," remarks in the Senate, *Congressional Record*, vol. 144, Feb. 11, 1998, S609-S612.

[119] 112 Stat. 2681-579. The full text of the provision that appropriated funds after the ice storms follows in the appendix to this memorandum.

[120] Steve Campbell, "Ice Storm Aid Pittance Seen as `Betrayal'," *Press Herald* online, Nov. 22, 1998, at [http://www.portland.com/sunews/story2.htm], visited Nov. 23, 1998; Charles Davant, "Congress Hastens Maine Ice Storm Relief," *Bangor Daily News*, May 12, 1999, visited online, site archived.

Private Utilities after the 2001 Terrorist Attacks. The destruction of much of the infrastructure around and under the World Trade Center on September 11, 2001, resulted in the appropriation of billions of dollars in federal assistance to New York City. The communications networks owned by private for-profit corporations were not eligible for assistance under the Stafford Act. Congress appropriated $783 million for a range of rebuilding efforts in Lower Manhattan, for economic revitalization and reconstruction in order to facilitate redevelopment, "including the restoration of utility infrastructure."[121] The conference report accompanying the legislation provided the following statements regarding this appropriation:

> The conference agreement includes an emergency appropriation of $783,000,000 for assistance to properties and businesses, including restoration of damaged infrastructure, and for economic revitalization activities in the areas of New York City affected by the September 11, 2001 terrorist attacks, instead of $750,000,000 as proposed by the House and Senate.
>
> The conferees recognize the tremendous human losses suffered by those businesses located in the World Trade Center, particularly those firms which suffered the greatest loss of life in the attacks. Because of the conferees' strong desire to support the redevelopment of the areas of New York City affected by the attacks and to encourage those businesses most devastated by the attacks to remain in New York City, the conferees have provided a $33,000,000 increase over the request. The conferees expect that these additional funds will be made available to assist those firms located in New York City at the time of the terrorist attacks which suffered a disproportionate loss of its workforce and who intend to re-establish their operations in New York City.
>
> The conferees concur with the language included in the House report encouraging the Lower Manhattan Development Corporation to consider the needs of utility companies and other institutions affected by the World Trade Center attacks.[122]

Private Health System after 2001 Tropical Storm Allison. In early June, 2001, President Bush issued a major disaster declaration for the state of Texas due to flooding associated with Tropical Storm Allison.[123] The Texas Medical Center (TMC), a health care complex that includes 13 hospitals as well as medical and nursing schools, suffered considerable damage.[124] The TMC, however, was not

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[121] 116 Stat. 890.

[122] U.S. Congress, Conference Committees, 2002, *Making Supplemental Appropriations for Further Recovery from and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to accompany H.R. 4775, H.Rept. 107-593, 107th Cong., 2nd sess. (Washington: GPO, 2002), p. 180.

[123] Information is available at U.S. Federal Emergency Management Agency, "Texas Severe Storms & Flooding: Declared June 9, 2001," at [http://www.fema.gov/news/event.fema?id=115], visited Aug. 1, 2006.

[124] Summary information is available at Ellen Parson, "1,000-Year Flood Paralyzes Texas Medical Center," Sept. 1, 2002, at [http://www.ecmweb.com/mag

(continued...)

eligible for Stafford Act assistance because of its for-profit status. Through a provision included in an omnibus appropriations statute, TMC was declared eligible for Stafford Act assistance, as follows:

> That notwithstanding any other provision of law, for disaster declaration FEMA-1379-DR and hereafter, the Texas Medical Center is to be considered for FEMA Public Assistance and Hazard Mitigation grants as if it were an eligible applicant.[125]

Controlling Federal Expenditures. The increase in federal expenditures for disaster assistance since 1990 has been the subject of some debate. A report issued by the Office of Inspector General (OIG) for FEMA concluded that the increase in federal disaster costs since 1989 "is due to a greater number and magnitude of disasters, expansion of the law and eligibility for assistance, and interpretation of the law and regulations."[126] Some contend that other factors, notably political considerations, contribute to the costs of disaster relief as well. One 2002 study by economists Thomas A. Garrett and Russell S. Sobel purports: "States politically important to the president have a higher rate of disaster declaration by the president, and disaster expenditures are higher in states having congressional representation on FEMA oversight committees. Election year impacts are also found." Another study, which builds upon the 2002 paper, examined presidential disasters declarations from 1981 through 2004 and found that "...the greater the electoral prize and the more competitive the statewide presidential contest, the more likely it is that a state will receive a presidential disaster declaration even after controlling for actual need."[127]

Another perspective on the issue was presented in a 1989 study completed by Government Accountability Office (GAO) that also considered the effects of politics on disaster declarations. After examining presidential declaration data from the perspective of the party affiliation of governors and members of state congressional delegations, the authors concluded that there "were no indications that party affiliation affected White House major disaster declaration decisions."[128] In light of concerns about funding decisions after the2004-2005 hurricanes, and the rising deficit, Members of the 109th Congress may elect to consider means of controlling costs or establishing alternative funding mechanisms.

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[124] (...continued)
/electric_year_flood_paralyzes/index.html], visited Aug. 2, 2006.

[125] P.L. 108-7, 117 Stat. 514.

[126] U.S. Federal Emergency Management Agency, at [http://www.fema.gov/library/pp2man.shtm], visited Nov. 19, 2004.

[127] Andrew Reeves, "Political Disaster? Presidential Disaster Declarations and Electoral Politics," Abstract, unpublished paper, August 29, 2005, available online at [http://www.people.fas.harvard.edu/~reeves/papers/fema.pdf], visited Aug. 2, 2006.

[128] U.S. General Accounting Office, *Disaster Assistance: Timeliness and Other Issues Involving the Major Disaster Declaration Process*, GAO/RCED-89-138, May 25, 1989, pp. 1, 4.