

FEMA's Role in the COVID-19 Federal Pandemic Response

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On March 13, 2020, President Donald J. Trump declared a nationwide emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, P.L. 93-288 as amended), authorizing assistance administered by the Federal Emergency Management Agency (FEMA). Five days later, the President notified then-FEMA Administrator Peter Gaynor that the agency would assume leadership of the federal pandemic response effort—the first known instance of FEMA serving in such a role for a public health incident.

The Stafford Act declarations and FEMA's role in the pandemic response changed the scope of the statute and the agency. Both President Donald J. Trump and President Joseph R. Biden Jr. activated the Stafford Act and FEMA resources in unprecedented ways to respond to the COVID-19 pandemic. Former President Trump issued the first unilateral, nationwide Stafford Act emergency declaration. Soon after, President Trump issued the first Stafford Act major disaster declaration for an infectious disease incident, and directed FEMA to lead the federal response. Within weeks, President Trump declared concurrent major disasters in every state and territory, marking the first time in history that the Stafford Act was activated to simultaneously deliver assistance for major disasters across the entire country. After assuming office in January of 2021, President Biden expanded the scope of assistance FEMA could provide for the pandemic, including full federal reimbursement for a wide range of ongoing emergency response measures undertaken by state, local, tribal, and territorial (SLTT) governments and healthcare providers.

FEMA, in turn, undertook unprecedented agency-level measures to respond. FEMA activated the National Response Coordination Center (NRCC) from which it coordinates federal response efforts, for the longest duration in its history (ongoing as of the date of publication). FEMA also established an interagency Unified Coordination Group (UCG) to lead the response—the first time the agency reported using such a team to manage nationwide federal response planning, logistics, and operations. To meet the extraordinary demands of a nationwide disaster, FEMA adapted foundational elements of its regionalized response framework, including changes to the deployment of federal assets, the prioritization and fulfillment of requests for emergency supplies, and communication with SLTTs. FEMA additionally coordinated novel applications of the Defense Production Act (DPA) for pandemic response, including contracting for and allocating scarce medical supplies, identifying anti-price-gouging and hoarding actions, and entering agreements to coordinate information-sharing with medical supply manufacturers and distributors. These extraordinary strains and innovations have prompted FEMA to rethink how the agency currently responds to disasters.

President Trump, President Biden, and FEMA also made significant pandemic-specific changes to its flagship response and recovery grant programs, Public Assistance and Individual Assistance. These programs are generally activated in response to sudden-onset hazards that strike a defined geographic area, such as hurricanes or fires. Their pandemic adaptations enabled the programs to finance assistance across the country over an extended period of time for pandemic-related lost wages, new sheltering options, emergency food distribution, COVID-19 diagnostic testing, vaccination programs, and facility reopening costs. The expansions of these grant programs well exceeded previous demands on the Disaster Relief Fund (DRF) that funds Stafford Act assistance. As of the end of the first quarter of FY2022, FEMA reports spending approximately \$90 billion from the DRF on the pandemic response.

FEMA's role in the COVID-19 pandemic has raised basic questions about the purpose and capacity of the agency and the Stafford Act. Policy issues facing Congress in the wake of these events include whether, and how, FEMA and the Stafford Act should be activated for long-term public health incidents, the consequences of pandemic-specific activations of Stafford Act authorities for the Disaster Relief Fund, and to what extent FEMA operational innovations should revert or continue. Congress additionally faces questions about the nature of FEMA's role in coordinating and implementing DPA activities for ongoing supply-chain issues and future public health incidents.

SUMMARY

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Introduction

On January 20, 2020, the United States documented its first known case of the disease caused by the novel coronavirus SARS-CoV-2.¹ In the weeks and months following, federal officials activated multiple emergency powers, established interrelated response task forces and decision-making bodies, and enacted a series of relief bills that together constituted what is referred to as the coordinated federal response, or whole-of-government response, to the Coronavirus Disease 2019 (COVID-19) outbreak and eventual pandemic.² These actions included historic declarations of emergency and major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, P.L. 93-288, as amended).³ The pandemic marked the first instance in the history of the United States in which the President activated the Stafford Act to provide nationwide assistance for the same incident; it also generated the first major disaster declarations for a public health incident. Contrary to historical precedent, existing federal incident response doctrine, and the primary scenarios outlined in federal pandemic response plans, the Federal Emergency Management Agency (FEMA) assumed leadership of this coordinated response at the direction of President Donald J. Trump on March 19, 2020.⁴

President Trump, and later President Joseph R. Biden, Jr., deployed FEMA and the Stafford Act in unprecedented ways to provide nationwide assistance during the pandemic, ranging from the distribution of personal protective equipment (PPE), to the development of a new unemployment assistance program, to the establishment of federal vaccination sites. As lead agency for government-wide DPA planning and coordination, FEMA Administrators also helped to implement selected presidential invocations of the Defense Production Act of 1950 (DPA, P.L. 81-774, as amended)⁵ to respond to pandemic-related supply constraints. The use of DPA during the pandemic—including by FEMA—at times underwhelmed expectations and raised concerns among policy experts, Members of Congress, and governors.⁶

¹ U.S. Department of Health and Human Services (HHS), *PanCAP Adapted: U.S. Government COVID-19 Response Plan*, Mar. 13, 2020, p. 1, <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf> (hereinafter HHS, *PanCap-Adapted*).

² For an explanation of the sequence of federal emergency declarations, see CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister. A compilation of hundreds of CRS products on various federal relief measures is available at <https://crsreports.congress.gov/resources/covid19/>; U.S. Government Accountability Office (GAO) references are available at <https://www.gao.gov/coronavirus>. For an agency description of the initial federal response, see Federal Emergency Management Agency (FEMA), *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, Jan. 2021, https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf (hereinafter FEMA, *Initial Assessment Report*); for a perspective from nonfederal stakeholders, see National Homeland Security Consortium (NHSC), *COVID-19 Pandemic: After-Action Report*, June 2021, <https://www.astho.org/COVID-19/NHSC-COVID-19-Pandemic-After-Action-Report/> (hereinafter NHSC, *Pandemic After-Action Report*).

³ The Stafford Act is codified at 42 U.S.C. §§5121 et seq.

⁴ FEMA, *Initial Assessment Report*, pp. 4, 7, 24.

⁵ The Defense Production Act of 1950 (DPA, 50 U.S.C. §§4501 et seq.) confers on the President authorities to mobilize domestic industry in service of national defense, broadly defined, including emergency preparedness and response to natural hazards like the pandemic. For recent information on the use of the DPA for the pandemic, see FEMA, *The Defense Production Act Committee Report to Congress*, Sept. 20, 2021, https://www.fema.gov/sites/default/files/documents/fema_DPAC-report-Defense-production-act-committee_2020.pdf. See also CRS In Focus IF11767, *The Defense Production Act Committee (DPAC): A Primer*, by Michael H. Cecire.

⁶ FEMA, *Initial Assessment Report*, pp. 4 and 7. See also testimony by then-FEMA Administrator Peter Gaynor in U.S. Congress, Senate Homeland Security and Governmental Affairs Committee, *Evaluating the Federal Government's Procurement and Distribution Strategies in Response to the COVID-19 Pandemic*, hearings, 116th Cong., 2nd sess., June

As noted in the following report, the pandemic compelled FEMA to rapidly adapt longstanding components of its response operations, flagship response and recovery programs, and coordination with state, local, tribal, and territorial governments. In the words of then-FEMA Administrator Peter Gaynor, who led FEMA in its first year of pandemic response, these innovations reflected “tremendous creativity, ... [and] also laid bare gaps and shortcomings in [the agency’s] plans, procedures, and policies.”⁷ To identify areas to improve, FEMA assessed its initial response to the pandemic in a January 2021 report.⁸ Additionally, the U.S. Government Accountability Office (GAO) and Department of Homeland Security’s Office of Inspector General have published multiple reports examining aspects of FEMA’s pandemic response (a list of resources may be found in **Appendix B**).

The 117th Congress faces questions regarding the scope and purpose of the Stafford Act, FEMA, and the agency’s use of the DPA as all three continue to shape the coordinated federal pandemic response. Should the Stafford Act and FEMA play central roles in future U.S. responses to infectious disease events? How should the Stafford Act and FEMA operate in conjunction with other emergency authorities and public health agencies in the future? How should FEMA deploy or coordinate the DPA to manage future supply chain constraints posed by biological incidents? Where should Congress locate responsibility for the challenges faced in the federal COVID-19 pandemic response, and how should those challenges be redressed? What, if any, authorities should Congress provide or revise given the course of the federal response?

This report first examines FEMA’s planned and actual role in the federal COVID-19 pandemic response. It then presents considerations for Congress focused on the Stafford Act and its public health adaptations, FEMA’s public health preparedness and response operations, the Disaster Relief Fund that finances Stafford Act assistance, and FEMA’s use of the DPA during the pandemic. A comprehensive account of FEMA’s many individual lines of effort and challenges faced during the COVID-19 pandemic exceeds the scope of this report; however, **Appendix B** includes relevant resources.

Terms

Within this report, the term “state” refers to states and territories. For purposes of the Stafford Act, “‘State’ means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands” (42 U.S.C. §5122(4)).

The term “tribe” refers to Indian tribal governments. Per the Stafford Act, “[t]he term ‘Indian tribal government’ means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994” (42 U.S.C. §5122(6)).

6, 2020, p. 3, <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Gaynor%20&%20Polowczyk-2020-06-09.pdf> (hereinafter, HSGAC, *Federal Procurement and Distribution*). See Shayan Karbassi, “Understanding Biden’s Invocation of the Defense Production Act,” Mar. 4, 2021, *Law Fare Blog*, <https://www.lawfareblog.com/understanding-bidens-invocation-defense-production-act>; H.Res. 906, Calling on the President to invoke the Defense Production Act to respond to COVID-19, 116th Cong., 2nd sess.; and Ariel Cohen, “Pharmacies, Governors Say Biden Test Program Is Depleting Supply,” *CQ News*, Jan. 27, 2022, <https://plus.cq.com/doc/news-6440599?0>. For background, see GAO, *Defense Production Act: Opportunities Exist to Increase Transparency and Identify Future Actions to Mitigate Medical Supply Chain Issues*, GAO-21-108, Nov. 2020, <https://www.gao.gov/assets/gao-21-108.pdf>, and CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Heidi M. Peters.

⁷ Then-FEMA Administrator Peter Gaynor, Introductory Letter, *Initial Assessment Report*, p. i.

⁸ FEMA, *Initial Assessment Report*.

Generally, Stafford Act assistance is requested by the “governor” (i.e., “the chief executive of any State” (42 U.S.C. §5122(5)), or the “chief executive” (i.e., “the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government” (42 U.S.C. §5122(12))).

The term “Recipient” in this report refers to “[a] non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program”; and the term “Applicant” or “PA Applicant” refers to “the responsible entity for a [Public Assistance] project,” per FEMA, *Public Assistance Program and Policy Guide (PAPPG)*, FP 104-009-2, June 1, 2020, pp. 21-22, https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf (hereinafter FEMA, *PAPPG 2020*).

The term “COVID-19 pandemic” refers to the public health disaster caused by the COVID-19 virus in the U.S., including the domestic outbreak that predated the World Health Organization’s designation of pandemic on March 11, 2020. World Health Organization, “WHO Director-General’s opening remarks at the media briefing on COVID-19,” March 11, 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—11-march-2020>.

Federal Response Doctrine: FEMA’s Planned Role in Infectious Disease Incidents

This section summarizes federal plans for FEMA’s involvement in infectious disease incidents prior to the outbreak of the COVID-19 virus in the United States to contextualize the actual role of the agency in the COVID-19 pandemic response.

Multiple overlapping and interrelated authorities govern U.S. federal responses to domestic hazards, including public health incidents. This report focuses on those that activate or involve FEMA, including those tailored to biological incidents and specifically infectious disease incidents (see **Appendix A** for a select list of relevant authorities).

Under these authorities, U.S. domestic incident response is organized according to a federalist “bottom-up” framework. Federal policy envisions a “whole-of-community” approach to domestic incident response, involving the authorities of individuals, SLTTs, private partners, and, when warranted, federal agencies. Federal authorities provide for federal involvement only if an incident exceeds state, local, tribal, and territorial (SLTT) response capacity,⁹ and generally only after one or more state, tribal, or territorial authorities request such involvement or assistance.¹⁰ FEMA articulates these principals in its assertion that incident preparedness, mitigation, response and recovery are ideally “locally executed, state, tribe, and territory-managed, and federally supported.”¹¹

The Department of Homeland Security identifies relevant roles and responsibilities of SLTTs, federal agencies, and private sector partners in the National Response Framework (NRF), a strategic guide to intergovernmental incident response.¹² The NRF recognizes that incidents—

⁹ See, for example, the President’s authority to authorize major disaster assistance under the Stafford Act following a request from a governor or tribal chief executive “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” (the Stafford Act, Section 401(a); 42 U.S.C. §5170(a)).

¹⁰ One exception, invoked for COVID-19, is the power of the President to declare an emergency under the Stafford Act Section 501(b) absent a request for assistance. Previously, this authority had been invoked for incidents involving federal property. See CRS Insight IN11251, *The Stafford Act Emergency Declaration for COVID-19*, by Erica A. Lee, Bruce R. Lindsay, and Elizabeth M. Webster.

¹¹ See, for example, FEMA, *Initial Assessment Report*, p. 9.

¹² The NRF was developed by the Secretary of Homeland Security, as required by the Post-Katrina Emergency Management Reform Act of 2005 (PKEMRA, as amended, P.L. 109-295); PKEMRA amended the Homeland Security

particularly nationally significant, severe incidents, such as the COVID-19 pandemic—transcend the authorities of a single federal statute, response framework, or agency.¹³

Under the NRF and related domestic response plans, federal disaster response activities generally fall under the leadership of one agency—what is referred to as the lead federal agency.¹⁴ According to the Public Health Service Act¹⁵ and federal response operations plans,¹⁶ the Department of Health and Human Services (HHS) is to lead federal public health response efforts for public health incidents. Meanwhile, the Homeland Security Act and the Stafford Act identify leadership and coordination roles for FEMA in domestic incidents that warrant federal assistance, particularly those with Stafford Act declarations.¹⁷ FEMA interpretations of these authorities and related presidential policy appear in **Figure 1**.¹⁸

Federal guidance detailing pandemic response activities, including the *Pandemic Crisis Action Plan (PanCAP)*; updated by FEMA in 2018) and its adaptation for the COVID-19 pandemic, *PanCAP-Adapted* (released by HHS on March 13, 2020), envisioned HHS leading the federal response.¹⁹ In its initial self-assessment, FEMA underscored

Act of 2002 (P.L. 107-296) in order to enhance domestic incident response. Section 509 of Post-Katrina Emergency Management Reform Act, P.L. 109-295 (6 U.S.C. §319); U.S. Department of Homeland Security (DHS), *National Response Framework*, Fourth Edition, Oct. 28, 2019, pp. 22, 45, https://www.fema.gov/sites/default/files/2020-04/NRF_FINALApproved_2011028.pdf, (hereinafter DHS, *NRF 2019*); FEMA, “National Response Framework,” <https://www.fema.gov/emergency-managers/national-preparedness/frameworks/response>. For more information, see CRS Report R46696, *National Preparedness: A Summary and Select Issues*, by Shawn Reese and Lauren R. Stienstra.

¹³ GAO, *Biodefense: After-Action Findings and COVID-19 Response Revealed Opportunities to Strengthen Preparedness*, GAO-21-513, Aug. 2021, p. 9, <https://www.gao.gov/products/gao-21-513>, (hereinafter GAO, *Biodefense: After-Action Findings*).

¹⁴ DHS, *NRF 2019*, p. 22.

¹⁵ The Public Health Service Act (PHSA, P.L. 78-409) provides emergency authorities the HHS Secretary may activate in response to threat of disease or disorder. Under the PHSA, the HHS Secretary “shall lead all Federal public health and medical response to public health emergencies and incidents covered by the National Response Plan” [succeeded by the NRF]. Public Health Service Act §2801; 42 U.S.C. §300hh. For more information, see CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister.

¹⁶ DHS defines a biological incident as one which has “the potential to overwhelm state and local resources and for which the Department of Health and Human Services (HHS), to lead all federal public health and medical efforts, deems that, in consultation with other relevant agencies, interagency support is or will be required” in interagency guidance detailing a federal response plan for biological incidents. DHS, *Biological Incident Annex to the Response and Recovery Federal Interagency Operations Plans, Final—January 2017*, https://www.fema.gov/sites/default/files/2020-07/fema_incident-annex_biological.pdf, p. vii. Additionally, according to FEMA, Presidential Policy Directive 44 (PPD-44) outlines agency leadership of domestic incidents in the absence of Stafford Act declarations; under this directive, HHS served as lead federal agency and FEMA lent support through late March, 2020. FEMA, *Initial Assessment Report*, p. 23. CRS has not reviewed PPD-44, as it is not publicly available.

¹⁷ Notably, FEMA has not served as the lead federal agency in incidents with Stafford Act declarations, particularly those relevant to the expertise of other federal agencies. For example, the President declared emergencies in New York and New Jersey under the Stafford Act for the West Nile Virus, but the CDC served as the lead federal agency. U.S. Congress, Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, “Responding to the West Nile Virus: Public Health Implications and Federal Response,” hearing, 107th Cong., 2nd sess., Oct. 3, 2002, no. 107-233.

¹⁸ See, for example, Sections 402 and 502 of the Stafford Act (42 U.S.C. §§5170a and 5192), which authorize the President to “direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services)” to support state and local response and recovery efforts following a Stafford Act major disaster or an emergency, respectively. These authorities were delegated to FEMA in Executive Order 12148 and subsequent amendments. Executive Order 12148, “Federal Emergency Management,” 44 *Federal Register* 43239, July 24, 1979.

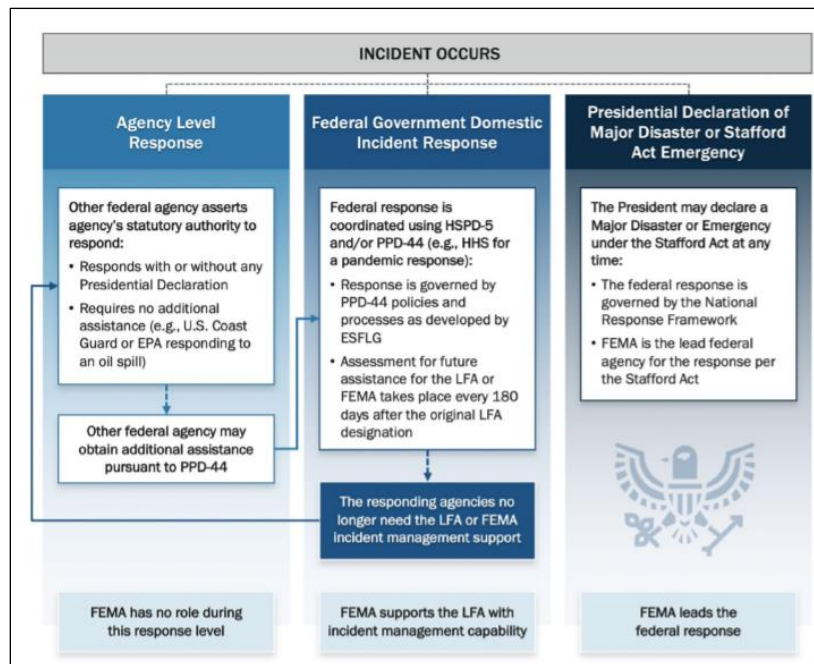
¹⁹ The *PanCAP* and *PanCAP-Adapted* are not publicly available. CRS may share the documents with Members of

[t]he 2018 Pandemic Crisis Action Plan (PanCAP) did not envision FEMA as the agency leading federal response for a whole-of-government response under the Stafford Act, or its role in managing health and medical supplies and equipment for SLTT partners nationally. FEMA regional pandemic plans either did not exist or did not account for jurisdiction-specific capabilities or deficiencies.²⁰

However, federal pandemic plans did allow for the possibility that a situation could evolve to warrant a different leadership structure, including one co-led by HHS and FEMA. In particular, the *PanCAP-Adapted* stipulated that HHS may “request FEMA coordination support to the overall federal response while HHS continues to lead the public health and medical response.”²¹ Further, the *PanCAP-Adapted* noted that widespread domestic transmission of the COVID-19 virus or a Stafford Act declaration might require the activation of an interagency Unified Coordination Group (UCG) at FEMA’s National Response Coordination Center (NRCC).²² FEMA and HHS implemented variations of these proposed leadership structures in March 2020.

Figure 1. Agency Leadership Designations in Domestic Incident Response

According to FEMA’s Interpretation of Presidential Policy



Source: FEMA's interpretation of Presidential Policy Directive 44 (PPD-44), FEMA, *Initial Assessment Report*, p. 32. See also DHS, *National Response Framework*, Fourth Edition, October 28, 2019, p. 43.

Congress and congressional staff upon request.

²⁰ FEMA, *Initial Assessment Report*, p. 11.

²¹ HHS, *PanCAP-Adapted*, p. 7.

²² *Ibid.*, p. 10.

NRF and Supporting Interagency Operations Plans

The NRF organizes federal response capabilities responsibilities under “Emergency Support Functions” (ESFs), each of which pertains to a particular response function and designates a lead agency and supporting agencies.²³ For example, ESF-8—Public Health and Medical Services “[c]oordinates the mechanisms for assistance in response to an actual or potential public health and medical disaster or incident.”²⁴ The agency designated as ESF-8 Coordinator is HHS. Additional federal interagency plans and systems translate the doctrine of the NRF into operational structures and procedures. These include:

- the National Incident Management System (NIMS), which outlines a flexible response management structure and vocabulary that may be used at local, state, regional, or national levels.²⁵ NIMS reflects the Incident Command System (ICS), which standardizes chains of command, organizational hierarchies, resource management and communication processes, and functional areas for field-level incident management operations;²⁶
- the Federal Interagency Operational Plans (FIOPs) align federal response tasks to specific agency roles and responsibilities;²⁷ FIOP “annexes,” like the Biological Incident Annex, tailor FIOPs to outline federal responses to specific types of hazards; and
- the Pandemic Crisis Action Plan (PanCAP), authored by FEMA in 2018, which adapts existing authorities and interagency response plans to specifically address a pandemic, including the *PanCAP-Adapted*, which HHS adapted specifically to guide response to the COVID-19 pandemic.

FEMA's Role in COVID-19 Pandemic Response

FEMA's Role Prior to March 13, 2020

To coordinate the response, President Trump first established the White House Coronavirus Task Force, led by then-HHS Secretary Alex Azar.²⁸ Two days later, on January 31, 2020, then-HHS Secretary Alex Azar declared a Public Health Emergency under the Public Health Service Act (PHSA), under which the Secretary “shall lead all Federal public health and medical response to public health emergencies.”²⁹ Thereafter, leadership of the expanding federal response evolved,³⁰ as summarized in **Table 1**. During this time, FEMA reported that it was lending support to HHS in its role as lead federal agency for public health response.³¹ According to FEMA, this support

²³ DHS, *NRF 2019*, pp. 21-22.

²⁴ *Ibid.*, p. 40.

²⁵ FEMA, *National Incident Management System*, Third Edition, Oct. 2017, https://www.fema.gov/sites/default/files/2020-07/fema_nims_doctrine-2017.pdf.

²⁶ Emergency Management Institute, *ICS Review Document*, Mar. 2018, <https://training.fema.gov/emiweb/is/icsresource/assets/ics%20review%20document.pdf>.

²⁷ See, for example, DHS, *Response Federal Interagency Operational Plan*, Second Edition, Aug. 2016, https://www.fema.gov/sites/default/files/documents/fema_response-fiop.pdf; and DHS, *Recovery Federal Response Federal Interagency Operational Plan*, Second Edition, Aug. 2016, https://www.fema.gov/sites/default/files/2020-07/Recovery_FIOP_2nd_aug2016.pdf.

²⁸ Stefanie Grisham, “Statement from the Press Secretary Regarding the President’s Coronavirus Task Force,” Jan. 29, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

²⁹ PHSA, P.L. 78-410, as amended; 42 U.S.C. §§201-300mm-61; HHS, “Public Health Emergency Declarations,” 2020: Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus, January 31, 2020, <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>. The declaration was made retroactive to January 27, 2020, and has been renewed several times.

³⁰ For more information, see FEMA, *Initial Assessment Report*, pp. 23-25.

³¹ FEMA, “FEMA Support to Coronavirus Response,” fact sheet, Mar. 4, 2020. Provided to CRS from FEMA Office of

included “crisis action planning, situational awareness reporting, interagency coordination, course of action development and logistics supply chain analysis.”³² Additionally, FEMA and HHS collaborated to “quickly adapt” the federal government’s general pandemic response plan to COVID-19.³³ However, FEMA’s overall role appeared relatively narrow. When invited to testify at a hearing on the federal response efforts before the Subcommittee on National Security of the U.S. House Oversight and Reform Committee FEMA declined, responding “the Agency does not feel as if there is much that we would be able to testify to.”³⁴

In February, FEMA began to identify personnel to deploy for pandemic incident management, and on March 4, 2020, FEMA reported that it was readying more than 50 teams to support SLTTs.³⁵ However, the agency reported that it was not preparing for a Stafford Act declaration and reasserted that HHS was the lead federal agency for the federal government’s public health response to the pandemic.³⁶ Additionally, FEMA indicated to Congress that it was not a part of the White House Coronavirus Task Force at this time.³⁷

Table I. Key Leadership Designations for Federal COVID-19 Pandemic Response
Relevant to FEMA’s Role

Date	Authority	Leadership Designation	Summary
Jan. 29, 2020	Various, including explicitly the National Biodefense Strategy, National Security Presidential Memorandum (NSPM) 14. ³⁸	Secretary of HHS to lead federal response as chair of White House Coronavirus Task Force.	President Trump announced the formation of the White House Coronavirus Task Force, which was “charged ... with leading the United States Government response,” and was to be “led by Secretary of Health and Human Services Alex Azar, and ... coordinated through the National Security Council.” ³⁹ The announcement referenced the <i>National Biodefense Strategy</i> , which along with NSPM-14 established a leadership structure chaired by the HHS Secretary for implementing the Strategy. ⁴⁰

Congressional and Legislative Affairs.

³² Ibid.

³³ FEMA, *Initial Assessment Report*, p. 23.

³⁴ U.S. Congress, House Committee on Oversight and Reform, “FEMA Briefs Oversight Committee on Administration’s Coronavirus Response,” Mar. 20, 2020, <https://oversight.house.gov/news/press-releases/fema-briefs-oversight-committee-on-administration-s-coronavirus-response>.

³⁵ FEMA, *Initial Assessment Report*, p. 83; FEMA, “FEMA Support to Coronavirus Response,” fact sheet, Mar. 4, 2020.

³⁶ FEMA, “FEMA Support to Coronavirus Response,” fact sheet, Mar. 4, 2020.

³⁷ U.S. Congress, House Committee on Oversight and Reform, “FEMA Briefs Oversight Committee on Administration’s Coronavirus Response,” Mar. 20, 2020, <https://oversight.house.gov/news/press-releases/fema-briefs-oversight-committee-on-administration-s-coronavirus-response>.

³⁸ HHS, “Posting of the National Security Presidential Memorandum 14, ‘Support for National Biodefense,’” notice, 83 *Federal Register* 52841-52843, Oct. 18, 2018.

³⁹ Stefanie Grisham, “Statement from the Press Secretary Regarding the President’s Coronavirus Task Force,” Jan. 29, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

⁴⁰ HHS, National Biodefense Strategy, <https://www.phe.gov/Preparedness/biodefense-strategy/Pages/goals-and-objectives.aspx>; Multiple Agencies, *National Biodefense Strategy*, Sept. 2018, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/09/National-Biodefense-Strategy.pdf>; HHS, “National Security Presidential Memorandum 14, ‘Support for National Biodefense,’” notice, 83 *Federal Register* 52841-52843, Oct. 18, 2018.

Date	Authority	Leadership Designation	Summary
			The establishment of the White House Coronavirus Task Force modified the incident response structures established in federal pandemic response plans. ⁴¹
Jan. 31, 2020	The Public Health Service Act. ⁴²	Secretary of HHS to lead federal public health and medical response to COVID-19 public health emergency.	Then-Secretary of Health and Human Services (HHS) Alex Azar declared a Public Health Emergency under the Public Health Service Act (PHSA) for the COVID-19 pandemic, which provides that the HHS Secretary “shall lead all Federal public health and medical response to public health emergencies and incidents covered by the National Response Plan” [succeeded by the NRF]. ⁴³
Feb. 26, 2020	Various, including NRF. ⁴⁴	Vice President to lead whole-of-government response.	President Trump announced that Vice President Michael Pence would lead the coordinated federal response and ESF-8. ⁴⁵ Secretary Azar confirmed in the same remarks that he would continue to serve as Chairman of the White House Coronavirus Task Force. ⁴⁶
March 13, 2020	The Stafford Act; Public Health Service Act, PanCap-Adapted: Biological Incident Annex to NRF.	FEMA to lead provision of Stafford Act assistance; HHS to lead overall federal pandemic response.	President Trump declared a Stafford Act emergency nationwide, specifying that “Administrator Gaynor shall coordinate and direct other Federal agencies in providing needed assistance under the Stafford Act, subject to the Department of Health and Human Services’ role as the lead Federal agency for the Federal Government’s response to COVID-19.” ⁴⁷
March 18-20, 2020	The Stafford Act.	FEMA to serve as lead federal agency of the whole-of-government pandemic response.	President Trump and Vice President Pence notified then-FEMA Administrator Peter Gaynor that the agency would assume the role of LFA of the coordinated federal response. HHS would continue to lead the public health response. ⁴⁸

⁴¹ GAO, *Biodefense: After-Action Findings*, p. 26; FEMA, *Initial Assessment Report*, p. 34.

⁴² PPD-44 is not a public document and was not available for CRS review for the writing of this report. However, FEMA reported that “PPD-44 enhances the ability of the federal government to respond to domestic incidents by providing for the timely identification of a lead federal agency (LFA) to oversee the federal response prior to a national disaster declaration and by ensuring that an appropriate incident management capability is available. Under this authority, FEMA supported HHS with incident management capability for the COVID-19 response,” prior to the Stafford Act declarations. FEMA, *Initial Assessment Report*, p. 23.

⁴³ Public Health Service Act §2801; 42. U.S.C. §300hh.

⁴⁴ The National Response Framework specifies that “[r]egardless of the type of incident, the President leads the Federal Government response effort to ensure that the necessary resources are applied quickly and efficiently to large-scale and catastrophic incidents.” (DHS, *NRF 2019*, p. 34).

⁴⁵ The White House, “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference,” Feb. 27, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-conference/>.

⁴⁶ Ibid.

⁴⁷ Letter from Donald J. Trump, President of the United States, to then-Acting Secretary Chad Wolf, then-Secretary Steven Mnuchin, Secretary Azar, and then-Administrator Peter Gaynor, Mar. 13, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/> (hereinafter President Trump, “Letter on Stafford Act Emergency Declaration for COVID-19”).

⁴⁸ FEMA, *Initial Assessment Report*, p. 7.

Date	Authority	Leadership Designation	Summary
March 20, 2020	National Response Framework; PanCap-Adapted; Biological Incident Annex to NRF.	Unified Coordination Group (UCG) to serve as interagency decision-making body for federal pandemic response.	Following FEMA's assumption of the role of LFA, FEMA and HHS established the UCG "for decision-making." Principals included the FEMA Administrator, the HHS Assistant Secretary for Preparedness and Response (ASPR), the HHS Assistant Secretary for Health, and Director of the Influenza Division in the National Center for Immunization and Respiratory Diseases at the U.S. Centers for Disease Control and Prevention (CDC). ⁴⁹
January 20, 2021	Various, including NRF. ⁵⁰	President Joseph R. Biden establishes the White House COVID-19 Response Team.	President Biden established the White House COVID-19 Response Team, coordinated by appointee Jeffrey Zients. ⁵¹

Source: CRS Analysis of Federal Pandemic Response structure leadership designations, and relevant authorities identified in **Table A-1**.

FEMA's Role Following Stafford Act Declarations for the Pandemic

On March 13, 2020, President Trump unilaterally declared an emergency pursuant to Stafford Act Section 501(b), authorizing assistance for COVID-19 response efforts for all U.S. states, territories, and the District of Columbia.⁵² This emergency declaration for the pandemic authorized a single form of FEMA assistance: Public Assistance (PA) for emergency protective measures.⁵³ Subsequently, governors and tribal chief executives submitted requests for major disaster declarations pursuant to Stafford Act Section 401 for the COVID-19 pandemic, and President Trump declared major disasters for all 50 states, five territories, the District of Columbia, and the Seminole Tribe of Florida. President Biden later approved the major disaster declaration requests of the Navajo Nation and the Poarch Band of Creek Indians for the COVID-19 pandemic.⁵⁴

⁴⁹ Ibid., pp. 24-25, 32.

⁵⁰ The National Response Framework specifies that "[r]egardless of the type of incident, the President leads the Federal Government response effort to ensure that the necessary resources are applied quickly and efficiently to large-scale and catastrophic incidents." (DHS, *NRF 2019*, p. 34).

⁵¹ President Joseph R. Biden Jr., "Executive Order on Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security," Executive Order 13987, Jan. 20, 2021, 86 *Federal Register* 7019-7021.

⁵² President Trump, "Letter on Stafford Act Emergency Declaration for COVID-19."

⁵³ PA provides supplemental grants or direct assistance (e.g., personnel, materials, operations) on a cost-share basis to subfederal governments and eligible nonprofits for costs incurred for specific activities, in this case, eligible emergency response measures. FEMA developed multiple iterations of guidance outlining eligible costs and measures. Current guidance is available at FEMA. Eligible measures are available in pandemic-specific guidance at FEMA, "Public Assistance Disaster-Specific Guidance," <https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations>. PA for emergency assistance is authorized pursuant to Section 502 of the Stafford Act (P.L. 93-288); 42 U.S.C. §5192. President Trump, "Letter on Stafford Act Emergency Declaration for COVID-19."

⁵⁴ Specific presidential declarations of major disaster for COVID-19 are listed at FEMA, "COVID-19 Disaster Declarations," <https://www.fema.gov/coronavirus/disaster-declarations>, and the FEMA "Disasters" webpage, available at <https://www.fema.gov/disasters>. For more information, see CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Erica A. Lee and Bruce R. Lindsay; and CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister.

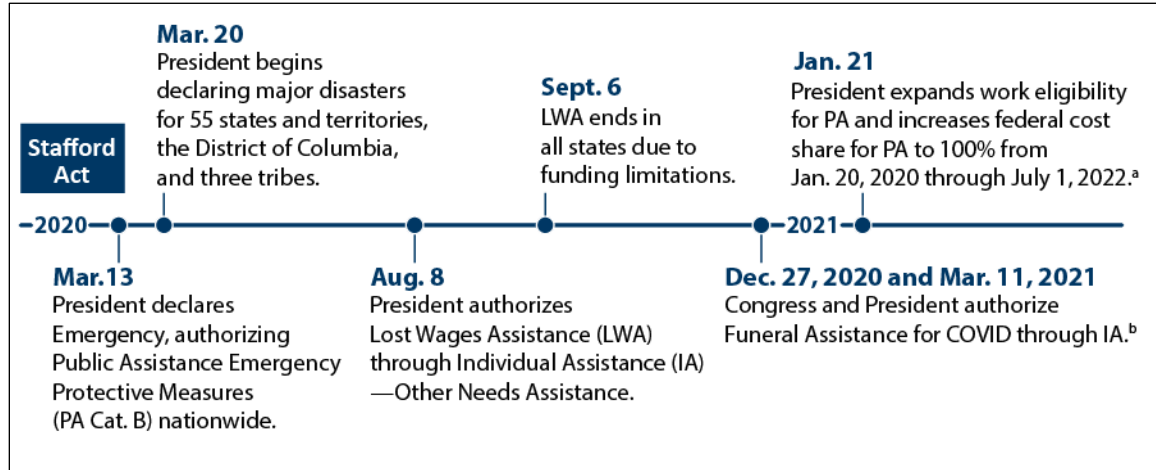
All major disaster declarations reauthorized PA for emergency protective measures, and most major disaster declarations authorized Individual Assistance (IA)—Crisis Counseling Assistance and Training Program (CCP) in the President’s initial declaration.⁵⁵ Subsequently, President Trump authorized the FEMA Administrator to approve CCP requests, and through the program, 46 states, Washington, DC, and four territories applied for and received CCP awards.⁵⁶ Later, on August 8, 2020, President Trump invoked IA statutory authorities to authorize FEMA to expend up to \$44 billion from the Disaster Relief Fund (DRF) for the Lost Wages Assistance (LWA) program to provide supplemental lost wages payments to individuals receiving unemployment insurance.⁵⁷ Congress also later authorized Funeral Assistance for the pandemic under the Stafford Act declarations.⁵⁸ Upon assumption of office in January 2021, President Biden increased the federal cost share for PA-eligible activities from 75% to 100% and expanded the range of work eligible for reimbursement. **Figure 2** provides a chronology of the activation of Stafford Act authorities for the pandemic.

⁵⁵ The Crisis Counseling Program (CCP) provides community-based outreach and psycho-educational services to support individuals and communities recovering from disasters. FEMA, “FEMA Administrator Authority to Approve Crisis Counseling During Coronavirus,” press release, Apr. 28, 2020, <https://www.fema.gov/fact-sheet/fema-administrator-authority-approve-crisis-counseling-during-coronavirus>; FEMA, “FEMA Administrator Approves 30 States for Crisis Counseling,” Release HQ-20-129, May 2, 2020, <https://www.fema.gov/news-release/20200726/fema-administrator-approves-30-states-crisis-counseling>.

⁵⁶ According to the GAO, FEMA awarded “about \$467 million to 46 states, Washington, DC, and four U.S. territories [Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands] via the Crisis Counseling Assistance and Training Program.” The states of Alaska, Kentucky, Mississippi, and Wyoming did not apply for CCP assistance (Alaska also withdrew its application for the CCP Regular Service Program). The Navajo Nation’s CCP Regular Services Program application is under review (as of December 2021), and the Poarch Band Creek Indians did not apply for CCP assistance (GAO, *Behavioral Health and COVID-19: Higher-Risk Populations and Related Federal Relief Funding*, GAO-22-104437, December 2021, pp. 74-76 (Appendix V), <https://www.gao.gov/assets/gao-22-104437.pdf>).

⁵⁷ The Lost Wages Assistance (LWA) program includes a 25% nonfederal cost sharing requirement funded by states and territories. It was authorized as a form of Other Needs Assistance under Stafford Act Section 408(e)(2) (42 U.S.C. §5174(e)(2)). President Donald J. Trump, “Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019,” Aug. 8, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>. For additional information on LWA, see CRS Insight IN11492, *COVID-19: Supplementing Unemployment Insurance Benefits (Federal Pandemic Unemployment Compensation vs. Lost Wages Assistance)*, by Katelin P. Isaacs and Julie M. Whittaker.

⁵⁸ Congress authorized Funeral Assistance first through the Consolidated Appropriations Act, 2021 and then in the American Rescue Plan Act of 2021 (ARPA); on the date of ARPA’s enactment, the President amended the declarations for the COVID-19 pandemic to add Funeral Assistance for the declared states, territories, and District of Columbia. For additional information on COVID-19 Funeral Assistance, see CRS Insight IN11582, *FEMA Funeral Assistance for COVID-19*, by Elizabeth M. Webster.

Figure 2. Authorization of Stafford Act Assistance for Pandemic-Related Costs

Sources: CRS interpretation of pandemic-specific PA and IA guidance, Stafford Act declarations, and relevant presidential memoranda.

Notes:

a. The President granted multiple extensions of the 100% federal cost share for PA and may issue additional extensions. FEMA announced that PA will be available for eligible pandemic-related measures indefinitely; the agency will provide at least thirty days' notice prior to the program's conclusion. According to current policy, FEMA will cover 100% of eligible costs through July 1, 2022, after which it will cover 90% of eligible costs.

b. Congress authorized Funeral Assistance first through the Consolidated Appropriations Act, 2021 and then in the American Rescue Plan Act of 2021 (ARPA); on the date of ARPA's enactment, the President amended the declarations for the COVID-19 pandemic to add Funeral Assistance for the declared states, territories, and District of Columbia.

The emergency and major disaster declarations for the pandemic were unprecedented in several respects. The emergency declaration marked the first time that a President had declared a Stafford Act emergency for all jurisdictions nationwide. Additionally, the COVID-19 nationwide emergency declaration marked the first time the president issued such an expansive declaration absent a governor or tribal chief executive's request, as is generally required for Stafford Act declarations except for very rare incidents determined to be of "primary Federal responsibility."⁵⁹ Additionally, while Presidents have occasionally declared emergencies under Stafford Act for public health incidents, the major disaster declarations for the pandemic were the first to be issued for any public health incident under current law.⁶⁰

Initially, in the March 13, 2020 Stafford Act declaration of emergency, President Trump explained that:

[FEMA] Administrator Gaynor shall coordinate and direct other Federal agencies in providing needed assistance under the Stafford Act, subject to the Department of Health

⁵⁹ Stafford Act Section 501(b); 42 U.S.C. §5170. For discussion, see Elizabeth Goiteen, "Emergency Powers, Real and Imagined: How President Trump Used and Failed to Use Presidential Authority in the COVID-19 Crisis," *Journal of National Security Law and Policy*, vol. 11, no. 27 (2020), pp. 51-53; for background, see CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Erica A. Lee and Bruce R. Lindsay; and CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister.

⁶⁰ Ibid.

and Human Services' role as the lead Federal agency for the Federal Government's response to COVID-19.⁶¹

However, on March 18, 2020, President Trump and Vice President Pence then directed FEMA to assume leadership of the coordinated federal response. FEMA assumed this role on March 19, 2020.⁶² The following description of FEMA's planned and observed role in the federal pandemic response draws upon a number of interrelated authorities in statute, regulations, and interagency guidance, as summarized in **Appendix A**.

Response Organizational Structure after FEMA's Assumption of Leadership

On March 20, 2020, FEMA and HHS established the Unified Coordination Group, consisting of four principals (representing FEMA and HHS) whose responsibility included "operational command, leadership, and decision making for the coordinated federal response," according to the GAO.⁶³ FEMA reported that, as lead federal agency for the coordinated federal response, the agency also led the UCG.⁶⁴ The FEMA Administrator and HHS Secretary additionally served on the White House Coronavirus Task Force, which oversaw the coordinated federal response.

Following FEMA's assumption of leadership, HHS transferred eight operational task forces it had established to support the federal response from the HHS Secretary's Operations Center to the National Response Coordination Center (NRCC) at FEMA headquarters.⁶⁵ The task forces represented interagency efforts dedicated to:

- Community Based Testing;
- Data Management;
- Laboratory Diagnostics;
- Healthcare System Resilience;
- Medical Countermeasures;
- Supply Chain Stabilization;
- Community Mitigation Measures;
- and Continuity of Operations.⁶⁶

Each task force was responsible for securing resources to support the federal pandemic response and to coordinate specific lines of effort. For example, the Community Based Testing Task Force, led by HHS with support from FEMA, was responsible for the creation of federally-supported community-based testing sites to increase COVID-19 testing nationwide.⁶⁷ According to FEMA, these task forces were initially led by HHS and Department of Defense (DOD) subject matter experts. The task forces did not correspond to the existing structure and functions of the NRCC,

⁶¹ President Trump, "Letter on Stafford Act Emergency Declaration for COVID-19."

⁶² FEMA, *Initial Assessment Report*, p. 7.

⁶³ Note that the GAO identified three principals in its June 2020 report on the federal pandemic response; FEMA later identified four principals in its *Initial Assessment Report*. GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, pp. 12-13 (hereinafter GAO, *COVID-19: Opportunities*); FEMA, *Initial Assessment Report*, p. 25.

⁶⁴ FEMA, *Initial Assessment Report*, p. 35.

⁶⁵ *Ibid.*, p. 37.

⁶⁶ For a thorough description of the responsibilities and key tasks of each task force, see GAO, *COVID-19: Opportunities*, pp. 91-92.

⁶⁷ GAO, *COVID-19: Opportunities*, p. 91; FEMA, *Initial Assessment Report*, pp. 38-39.

which is modeled off of the NRF and NIMS (National Incident Management System) guidance (see textbox on p. 6 for more information). As a result, existing NRCC response functions and the pandemic-specific task forces operated in parallel.⁶⁸ See **Figure 3** for a visualization of the federal pandemic response organization according to FEMA.⁶⁹

As FEMA describes, “[f]or any given incident, FEMA disaster response begins and ends with the affected [FEMA] Region in the lead.”⁷⁰ In line with this posture, FEMA’s ten Regional Response Coordination Centers (RRCCs) all activated to support the federal pandemic response, led by FEMA Regional Administrators. FEMA regional staff coordinated with SLTT representatives, relayed information from the NRCC to SLTT partners, and deployed regional FEMA personnel to directly assist SLTT emergency management and public health offices.⁷¹ However, FEMA found that certain functions typically coordinated out of regional offices required adaptation. For example, FEMA designed national Mission Assignments (or “work orders” for federal personnel) to reduce the burdens on FEMA regions and provide the NRCC better situational awareness nationwide.⁷²

In May and June, 2020, FEMA’s role in the federal pandemic response changed to enable FEMA to “prepare and support the upcoming hurricane season and other potential disasters Americans may face.”⁷³ The remaining response task forces were converted into working groups, over which HHS reassumed oversight.⁷⁴ HHS and the Defense Logistics Agency assumed responsibility for certain FEMA lines of effort related to medical supply chain management and procurement, respectively.⁷⁵ However, FEMA retains an active and leading role in the federal pandemic response as of the date of publication of this report.

Stakeholder Commentary on Leadership Transition

Perceived delays in FEMA’s assumption of a leadership role in the federal response prompted concern among some Members of Congress, news media, and academic sources.⁷⁶ For example, Representative Xochitl Torres Small noted in a July 2020 hearing that a congressional evaluation of lessons learned should

⁶⁸ FEMA, *Initial Assessment Report*, pp. 32-40.

⁶⁹ *Ibid.*, pp. 23-24.

⁷⁰ FEMA, *Incident Management and Support Keystone*, Jan. 2011, p. 47, https://www.fema.gov/sites/default/files/2020-07/fema_incident_management_and_support_keystone-Jan2011.pdf.

⁷¹ *Ibid.*, pp. 25-26, 33-34, 80-85.

⁷² FEMA, *Initial Assessment Report*, pp. 57-59.

⁷³ Submitted testimony of then-FEMA Administrator Gaynor and Real Admiral Polowczyk, HSGAC, *Federal Procurement and Distribution*, p. 7.

⁷⁴ FEMA, *Initial Assessment Report*, p. 5.

⁷⁵ GAO has noted that the scope and nature of the transition of FEMA supply chain management responsibilities to HHS lacked clarity. See GAO, *COVID-19: Federal Efforts*, pp. 19-20; See also submitted testimony of then-FEMA Administrator Gaynor and Real Admiral Polowczyk, HSGAC, *Federal Procurement and Distribution*, p. 7.

⁷⁶ See, for example, Daniel Kaniewski, “Coronavirus Is a Disaster. Why Hasn’t FEMA Been Brought In?” *Politico*, Mar. 10, 2020, <https://www.politico.com/news/agenda/2020/03/10/coronavirus-crisis-fema-125076>; Eric Lipton, Zolan Kanno-Youngs, and Helene Cooper, “Trump Slowly Enlisting More Agencies in ‘Whole of Government’ Response to Virus,” *New York Times*, Mar. 17, 2020, <https://www.nytimes.com/2020/03/17/us/politics/coronavirus-government-army-corps.html>; and William Shields, “The COVID-19 Pandemic: Early Lessons for Public Governance: The United States Experience,” in *Good Public Governance in a Global Pandemic*, Paul Joyce, Fabienne Maron and Purshottama Sivanarain Reddy, eds., IIAS public Governance Series, vol. 1, no. 1, pp. 429-442.

includ[e] revisiting the appointment of FEMA as the lead of the federal response effort in mid-March, more than six weeks after the White House Coronavirus Task Force was formed; a delay that unquestionably put the agency at a disadvantage of executing such a formidable task.⁷⁷

Despite these concerns, FEMA's response also garnered praise from some subfederal stakeholders. In July 2020, the Director of California's Office of Emergency Services testified that

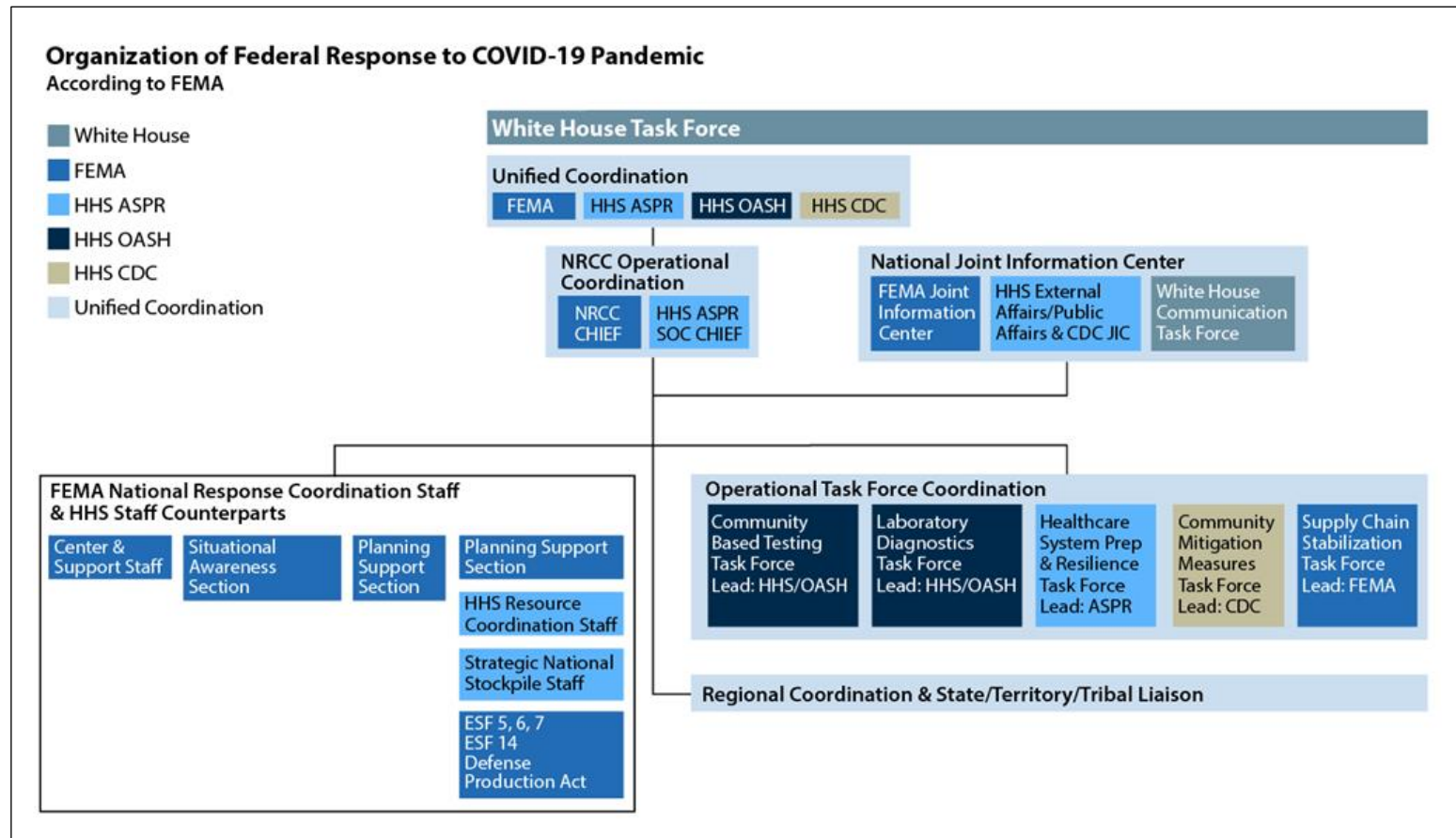
[g]iven the complexity of the situation and how late into the response they took over federal responsibility, FEMA was both challenged and worked to be incredibly responsive. FEMA did the best they could to organize information and operations to assist our state. FEMA Region IX is still embedded in the SOC and has played a critical role in the state's Logistics and Commodity Movement Task Force and in communicating across the entire federal family. Particularly, the FEMA Region IX Administrator and liaison officers have been highly communicative and supportive."⁷⁸

⁷⁷ Testimony of Rep. Xochitl Torres Small, Chairman of House Committee on Homeland Security, Subcommittee on Oversight, Management and Accountability, in U.S. Congress, House Homeland Security Subcommittees on Oversight, Management and Accountability and Emergency Preparedness, Response and Recovery, House Committee on Homeland Security, *Federal and State Pandemic Supply Preparedness and Response*, hearing, 116th Cong., 2nd sess., July 14, 2020 (hereinafter House Homeland Security Committee, *Federal And State Pandemic Supply Preparedness and Response*).

⁷⁸ Submitted testimony of Director, California Governor's Office of Emergency Services and Governor's Homeland Security Advisor Mark Ghilarducci, in House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*, p. 4.

Figure 3. Organization of the Federal Coordinated Pandemic Response

According to FEMA



Source: CRS adaptation of FEMA, “Revised UCG Structure in COVID-19 Response,” *Initial Assessment Report*, p. 36.

Notes: Not all task forces are pictured. Color codes indicate agency leadership of different functions. ASPR = Assistant Secretary of Preparedness and Response; OASH = Office of the Assistant Secretary for Health and Response; CDC = U.S. Centers for Disease Control and Prevention; SOC = HHS Secretary’s Operations Center, the primary emergency operations center for HHS; ESF = Emergency Support Functions as described in the National Response Framework; JIC = Joint Information Center.

FEMA's Pandemic Response: Key Lines of Effort

This section identifies FEMA's key lines of effort during its expanded role in the pandemic response following the Stafford Act declarations for the COVID-19 pandemic (see **Figure 4**). This overview is not intended to offer an exhaustive catalogue of FEMA's actions during the pandemic (see **Appendix B** for resources that comprehensively detail FEMA's pandemic response efforts).

Lead Federal Agency (LFA) of the Federal Pandemic Response

In this role, FEMA coordinated resources across the federal government and helped to establish and served on the Unified Coordination Group (UCG), an interagency decision-making body. On March 19, 2020, as FEMA assumed leadership of the coordinated response, federal pandemic response operations moved to the National Response Coordination Center (NRCC), an interagency response operations room inside FEMA headquarters.⁷⁹ The NRCC activated to Level 1, its highest activation level, for 426 days—an activation of unprecedented duration.⁸⁰ FEMA's 10 Regional Response Coordination Centers (RRCCs) also all activated and coordinated SLTT support and communications.⁸¹

SLTT Emergency Management Operational Support

FEMA's national and regional offices provided technical assistance and communications support and deployed federal personnel to SLTT emergency management offices. For example, according to FEMA, over 100 FEMA Integration Team (FIT) members—already embedded in state emergency management offices prior to the pandemic—supported pandemic response communication and planning across all levels of government. FEMA regional offices also deployed Incident Management Assessment Teams-Advance (IMAT-As) and liaison officers to support state, territorial, and tribal requests for direct and financial assistance.⁸²

Public Assistance (PA) for SLTT and Nonprofit Response Efforts

Since March 13, 2020, FEMA has provided reimbursement through the PA program for the eligible costs of specific emergency protective measures incurred by eligible PA Applicants (e.g., SLTTs and eligible nonprofits) responding to the pandemic. The wide range of costs eligible for reimbursement includes pandemic-related purchase and distribution of food; the provision of emergency medical care and diagnostic and screening testing; non-congregate sheltering for eligible individuals; the purchase of medical supplies; the construction and operation of alternative care facilities; the reopening of eligible public and nonprofit facilities; and compensation of overtime and surge staff needed to execute the above measures.⁸³

⁷⁹ Ibid., pp. 25, 32.

⁸⁰ Initial activation to Level 1 reported in FEMA, *Initial Assessment Report*, p. 32. FEMA reported that the NRCC reduced activation to Level III on May 19, 2021. FEMA, "FEMA Daily Ops Briefing," May 19, 2021.

⁸¹ FEMA, *Initial Assessment Report*, pp. 158-159.

⁸² Ibid., pp. 10, 25-26, 77, 81-85.

⁸³ See FEMA, "Public Assistance Disaster-Specific Guidance—COVID-19 Declarations," <https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations>, for a collection of guidance delineating eligible work, particularly FEMA, "Eligible Emergency Protective Measures," August 27, 2021, <https://www.fema.gov/fact-sheet/eligible-emergency-protective-measures>.

Additionally, FEMA provided direct federal assistance (e.g., federal personnel, materials, space, operations) when PA Applicants were found unable to execute eligible response activities. FEMA mission assignments—or “work orders”—for FEMA and other agencies reflect provision of direct assistance ranging from the provision of temporary medical facilities to the deployment of federal personnel to perform vaccination to the establishment of quarantine housing.⁸⁴ Most recently, in January 2022, FEMA released guidance stipulating how the agency would support the expansion of healthcare facilities, including with direct federal assistance.⁸⁵

Under the emergency and major disaster declarations issued by President Trump, Applicants could receive reimbursement for 75% of the eligible costs of specific response measures. Subsequently, President Biden increased the federal cost share to 100%.⁸⁶ Under current presidential directive, FEMA shall reimburse 100% of costs incurred from January 20, 2020, through July 1, 2021.⁸⁷ Thereafter, FEMA has announced that PA may be available to cover at least 90% of eligible costs incurred.⁸⁸ The agency will provide at least thirty days’ notice prior to the conclusion of the program for the pandemic.⁸⁹ As of December 2021, FEMA has obligated more than \$34 billion through the PA program for pandemic-related expenses, an unprecedented sum for a single incident.⁹⁰

Individual Assistance (IA) for Funeral Costs, Lost Wages, and Crisis Counseling

The President and Congress authorized FEMA to provide select forms of IA to support recovery from the COVID-19 pandemic. Specifically, President Trump authorized FEMA to provide assistance through the Crisis Counseling Assistance and Training Program (CCP) and the Lost Wages Assistance (LWA) program. Subsequently, Congress authorized FEMA to provide COVID-19 Funeral Assistance.

CCP is a type of IA that can be authorized pursuant to a major disaster declaration under the Stafford Act.⁹¹ It provides grants to state, local, territorial, or tribal government agencies that allow them to deliver—or contract with local mental health services to deliver—community-based outreach and psycho-educational services to support individuals and communities

⁸⁴ OpenEFMA, “OpenFEMA Dataset: Mission Assignments,” reflecting obligations made through January 7, 2022, <https://www.fema.gov/openfema-data-page/mission-assignments>.

⁸⁵ FEMA and Assistant Secretary for Preparedness and Response (ASPR), *Healthcare Facility Expansion Assistance Playbook*, Dec. 2021, https://www.fema.gov/sites/default/files/documents/fema_healthcare-facility-expansion-assistance-playbook.pdf.

⁸⁶ President Joseph R. Biden, “Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States,” Jan. 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/extend-federal-support-to-governors-use-of-national-guard-to-respond-to-covid-19-and-to-increase-reimbursement-and-other-assistance-provided-to-states/>.

⁸⁷ President Joseph R. Biden, Jr. “Memorandum on Maximizing Assistance to Respond to COVID-19,” Mar. 1, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/01/memorandum-on-maximizing-assistance-to-respond-to-covid-19-2/>; FEMA Advisory: “COVID-19 Cost Share Extension,” Mar. 1, 2022.

⁸⁸ FEMA Advisory: “COVID-19 Cost Share Extension,” Mar. 1, 2022.

⁸⁹ See, “Time Limitations for the Completion of Work,” in FEMA, “Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim),” FEMA Policy FP 104-009-19, Sept. 1, 2021, p. 6, https://www.fema.gov/sites/default/files/2020-09/fema_public-assistance-eligibility-for-covid_policy_9-1-2020.pdf.

⁹⁰ CRS Analysis of FEMA, “Public Assistance Funded Projects—Details,” as of Dec. 5, 2021, <https://www.fema.gov/openfema-data-page/public-assistance-funded-projects-details-v1>.

⁹¹ 42 U.S.C. §5183; 44 C.F.R. §206.171.

recovering from disasters.⁹² The majority of the jurisdictions that received major disaster declarations for the COVID-19 pandemic were authorized to receive assistance through the CCP.⁹³ President Trump authorized some CCP requests, and on April 28, 2020, the FEMA Administrator was authorized to approve COVID-19-related requests for CCP to expedite assistance.⁹⁴

Invoking ONA's general statutory authority, President Trump issued a presidential memorandum that authorized the LWA program and allowed FEMA to provide grants to states, territories, and the District of Columbia for supplemental lost wages payments to individuals receiving unemployment insurance.⁹⁵ ONA typically provides financial assistance for uninsured disaster-related necessary expenses and serious needs (e.g., assistance to replace disaster-damaged personal property and vehicles, and funeral assistance); LWA was a novel use of ONA.⁹⁶

Funeral Assistance is another form of ONA that helps with eligible funeral expenses and is typically available when the President authorizes the Individuals and Households Program (IHP)—a type of Individual Assistance—pursuant to a declaration of emergency or major disaster under the Stafford Act.⁹⁷ In the case of the COVID-19 pandemic, however, Congress authorized FEMA to provide COVID-19 Funeral Assistance.⁹⁸ Specifically, Section 201 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Division M of the Consolidated Appropriations Act, 2021, P.L. 116-260), and Section 4006 of the American Rescue Plan Act of

⁹² 42 U.S.C. §5183; 44 C.F.R. §206.171.

⁹³ The Crisis Counseling Program requests submitted by American Samoa and the Seminole Tribe of Florida had not been approved as of Aug. 24, 2021 (email to CRS from FEMA Office of External Affairs, Aug. 24, 2021, noting "American Samoa and Seminole Tribe of Florida have not been declared for IA with CCP").

⁹⁴ FEMA, "FEMA Administrator Authority to Approve Crisis Counseling During Coronavirus," release, Apr. 28, 2020, <https://www.fema.gov/fact-sheet/fema-administrator-authority-approve-crisis-counseling-during-coronavirus>; and FEMA, "FEMA Administrator Approves 30 States for Crisis Counseling," Release HQ-20-129, May 2, 2020, <https://www.fema.gov/news-release/20200726/fema-administrator-approves-30-states-crisis-counseling>. According to the GAO, FEMA awarded "about \$467 million to 46 states, Washington, DC, and four U.S. territories [Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands] via the Crisis Counseling Assistance and Training Program." The states of Alaska, Kentucky, Mississippi, and Wyoming did not apply for CCP assistance (Alaska also withdrew its application for the CCP Regular Service Program). The Navajo Nation's CCP Regular Services Program application is under review (as of December 2021), and the Poarch Band Creek Indians did not apply for CCP assistance (GAO, *Behavioral Health and COVID-19: Higher-Risk Populations and Related Federal Relief Funding*, GAO-22-104437, December 2021, pp. 74-76 (Appendix V), <https://www.gao.gov/assets/gao-22-104437.pdf>).

⁹⁵ President Donald J. Trump, "Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019," Aug. 8, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>. See also, FEMA, "Lost Wages Supplemental Payment Assistance Guidelines," <https://www.fema.gov/disaster/coronavirus/governments/supplemental-payments-lost-wages-guidelines>. LWA was subject to a 25% nonfederal cost sharing requirement.

⁹⁶ Section 262(b) of the Consolidated Appropriations Act, 2021 (P.L. 116-260) authorized states to waive the requirement that individuals repay Lost Wages Assistance (LWA) that they were not entitled to receive if the state determines: "(1) the payment of such covered assistance [LWA] was without fault on the part of the individual; and (2) such repayment would be contrary to equity and good conscience." Additionally, pursuant to Section 262(c), a state's debt waiver issued under Section 262(b) also waives a debt owed to the United States.

⁹⁷ 42 U.S.C. §5174(e)(1); 44 C.F.R. §206.119(b)(1).

⁹⁸ Only Funeral Assistance, and not all forms of Individuals and Households Program (IHP) assistance, has been authorized for the COVID-19 pandemic Stafford Act declarations.

2021 (P.L. 117-2) authorized FEMA to provide financial assistance for COVID-19-related funeral expenses at 100% federal cost share.⁹⁹

Supply Chain Stabilization

In coordination with DOD and HHS, FEMA led efforts to stabilize critical domestic supply chains, particularly medical supply chains, upon assuming the role of LFA in March 2020.¹⁰⁰ FEMA initiated several efforts in this capacity. First, FEMA began working with HHS and DOD to assess and stabilize the PPE supply chain after forming the Supply Chain Task Force.¹⁰¹ The Supply Chain Task Force supported PPE distribution efforts, analyzed supply chain vulnerabilities, and transported privately purchased PPE from manufacturers abroad to domestic airports through Project Air Bridge.¹⁰²

Second, as designated lead of the federal government's Joint DPA Office, FEMA coordinated and vetted invocations of the statute in support of the federal pandemic response.¹⁰³ In this role, FEMA released guidance in coordination with Customs and Border Protection on the use of DPA to allocate and federal prioritize orders for scarce medical supplies.¹⁰⁴ FEMA's DPA actions included procuring critical medical supplies through priority-rated contracts, seizing and distributing PPE under anti-hoarding and price-gouging authorities, restricting exports of certain critical medical supplies, and establishing a voluntary agreement with private medical distributors to share price, cost, supply, distribution, and capacity utilization information, among other data, on certain critical health supplies.¹⁰⁵

⁹⁹ On the date of the enactment of the American Rescue Plan Act of 2021 (P.L. 117-2), the declarations for the COVID-19 pandemic for the declared states, territories, and District of Columbia (but not the three tribes) were amended to authorize Funeral Assistance under Other Needs Assistance (ONA) (the amendments limit IHP-ONA to Funeral Assistance).

¹⁰⁰ See CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire, pp. 12-17; GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, Sept. 2020, pp. 10-24, <https://www.gao.gov/assets/gao-20-701.pdf> (hereinafter GAO, *Federal Efforts*); FEMA, Initial Assessment Report, pp. 24-25.

¹⁰¹ Submitted testimony of then-FEMA Administrator Peter Gaynor and Rear Admiral John Polowczyk, HSGAC, *Federal Procurement and Distribution*, pp. 4-5.

¹⁰² *Ibid.*; GAO, *Federal Efforts*, pp. 10-12; FEMA, Initial Assessment Report, pp. 45-76; CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire, pp. 7-16.

¹⁰³ FEMA, "Defense Production Act Authority and Functions of the FEMA Administrator," <https://www.fema.gov/disaster/defense-production-act/dpa-authority-and-functions>. For detailed discussion of pandemic-specific organization of DPA authorities across the government, see GAO, *Defense Production Act: Opportunities Exist to Increase Transparency and Identify Future Actions to Mitigate Medical Supply Chain Issues*, GAO-21-2018, November 2020, <https://www.gao.gov/assets/gao-21-108.pdf>; for a brief overview of DPA leadership and FEMA's role see CRS In Focus IF11767, *The Defense Production Act Committee (DPAC): A Primer*, by Michael H. Cecire.

¹⁰⁴ Executive Office of the President, Executive Order 13911, "Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19," Mar. 27, 2020, 85 *Federal Register* 18403. Subsequent notices report that authorities delegated to the DHS Secretary have "in turn been delegated to the FEMA Administrator in DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020)." See, for example, FEMA, "Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use," temporary final rule, Apr. 10, 2020, 85 *Federal Register* 20195.

¹⁰⁵ See CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire; FEMA, Initial Assessment Report, pp. 69-73; GAO, *Defense Production Act: Opportunities Exist to Increase Transparency and Identify Future Actions to Mitigate Medical Supply Chain Issues*, GAO-21-108, November 2020, <https://www.gao.gov/assets/gao-21-108.pdf>; CRS Insight IN11470, *Defense Production Act (DPA): Recent Developments in Response to COVID-19*, by Heidi M. Peters and Erica A. Lee; FEMA, "Pandemic

FEMA transferred certain medical supply chain responsibilities back to HHS and ASPR beginning in June 2020, including management of the Supply Chain Task Force, which became the Supply Chain Advisory Group under HHS's management on June 15, 2020.¹⁰⁶

Critical Medical Supply Distribution

Following its assumption of the role of lead federal agency, FEMA coordinated and often executed federal efforts to distribute critical medical supplies, including PPE, testing supplies, ventilators, and oxygen. As part of this effort, FEMA collaborated with ASPR and DOD to provide and receive contracting support, including entering into an agreement with ASPR that enabled FEMA to acquire and distribute critical medical supplies, including PPE, from the Strategic National Stockpile (SNS).¹⁰⁷ At the time of publication, FEMA continues to distribute scarce medical supplies to states, tribes, and territories through its authorities to provide direct assistance under the PA program. States, tribes, and territories may then distribute these resources to localities and eligible nonprofits within their jurisdictions, including healthcare facilities.

National Guard Mobilization

The President has authorized FEMA to fund 100% of eligible costs of mobilizing the National Guard under Title 32 of the *U.S. Code* to execute certain pandemic response measures, including work related to vaccination, hospital and medical staffing (including “wraparound” hospital support services like cleaning, security, and food preparation), testing, and food distribution, among others.¹⁰⁸ Under Title 32, FEMA issues fully-funded mission assignments to DOD for National Guard mobilization; troops operate at the direction of governors. Funding covers troops' salaries, allowances, travel expenses, and per diem.¹⁰⁹ Barring any changes, FEMA's 100%

Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID-19,” 86 *Federal Register* 28851-28884, May 28, 2021.

¹⁰⁶ GAO, *Federal Efforts*, pp. 10-11.

¹⁰⁷ Submitted testimony of Administrator Peter Gaynor and Rear Admiral John Polowczyk, HSGAC, *Federal Procurement and Distribution*, p. 7; FEMA and HHS, “Memorandum of Understanding Between the Federal Emergency Management Agency and the Department of Health and Human Services, Office of Assistant Secretary for Preparedness Response,” executed Apr. 5, 2020, provided to CRS by FEMA Office of Congressional and Legislative Affairs. Available to congressional members and staff upon request.

¹⁰⁸ President Joseph R. Biden., Jr. “Memorandum on Maximizing Assistance to Respond to COVID-19,” Mar. 1, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/01/memorandum-on-maximizing-assistance-to-respond-to-covid-19-2/>; FEMA Advisory: “COVID-19 Cost Share Extension,” Mar. 1, 2022; White House, “Memorandum for the Secretary of Homeland Security and the Administrator of the Federal Emergency Management Agency on Maximizing Assistance to Respond to COVID-19,” Nov. 9, 2021 (hereinafter White House, “Maximizing Assistance,” Nov. 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/09/memorandum-for-the-secretary-of-homeland-security-and-the-administrator-of-the-federal-emergency-management-agency-on-maximizing-assistance-to-respond-to-covid-19/>; FEMA, “FEMA Administrator Gives Remarks to Ongoing COVID-19 Response,” Jan. 14, 2022, <https://www.fema.gov/press-release/20220114/icymi-fema-administrator-gives-remarks-ongoing-covid-19-response>; FEMA, “Federal Support for Wraparound Medical Care and Services During COVID-19 Response,” Jan. 14, 2022.

¹⁰⁹ FEMA will also reimburse states and territories for the costs of mobilizing the National Guard for eligible work under Title 10 of the *U.S. Code* (State Active Duty), but mission assignments may help relieve economic and administrative burdens associated with Title 10 mobilizations. FEMA, “National Guard Deployment Extended to Support COVID-19 Response,” updated Jan. 14, 2022, <https://www.fema.gov/fact-sheet/national-guard-deployment-extended-support-covid-19-response>.

funding for the eligible costs of National Guard mobilization is scheduled to expire on July 1, 2022, after which FEMA will cover 90% of eligible costs.¹¹⁰

Vaccination Assistance

FEMA provides 100% reimbursement and direct assistance through the PA program for Applicants' eligible vaccination work, currently available through July 1, 2022.¹¹¹ Since January 2021, FEMA has provided enhanced vaccination assistance, including extensive direct assistance (e.g., federal personnel, supplies, contract assistance, facilities) and the establishment of several dozen federally-run mass vaccination sites that provided vaccine allocations in excess of those distributed to individual states and territories.¹¹² FEMA PA is available for a range of costs related to vaccine administration and distribution, including operations and surge personnel costs, PPE, facility support costs, vaccine storage and transportation, equipment, security, and transport for individuals under certain circumstances.¹¹³ Applicants may also receive reimbursement and direct assistance for vaccination community outreach (e.g., communications, personnel), booster vaccination campaigns, and vaccination of children ages 5 through 11 years.¹¹⁴

¹¹⁰ President Joseph R. Biden., Jr. "Memorandum on Maximizing Assistance to Respond to COVID-19," Mar. 1, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/01/memorandum-on-maximizing-assistance-to-respond-to-covid-19-2/>; FEMA Advisory: "COVID-19 Cost Share Extension," Mar. 1, 2022.

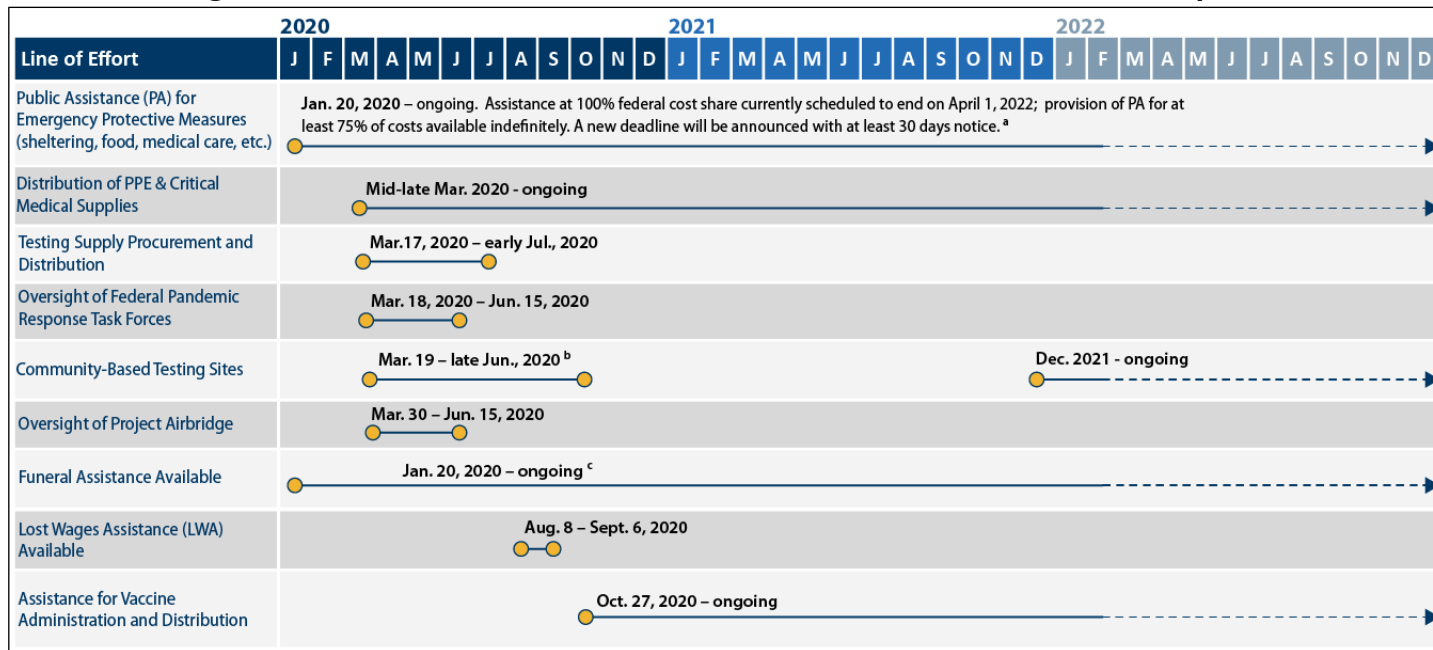
¹¹¹ President Joseph R. Biden., Jr. "Memorandum on Maximizing Assistance to Respond to COVID-19," Mar. 1, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/01/memorandum-on-maximizing-assistance-to-respond-to-covid-19-2/>; FEMA Advisory: "COVID-19 Cost Share Extension," Mar. 1, 2022; FEMA, "Vaccine Support," <https://www.fema.gov/disaster/coronavirus/vaccine-support>; and CRS Report R46715, *FEMA Assistance for Vaccine Administration and Distribution: In Brief*, by Erica A. Lee and Kavya Sekar.

¹¹² FEMA, "Vaccine Support," <https://www.fema.gov/disaster/coronavirus/vaccine-support>; CRS Report R46715, *FEMA Assistance for Vaccine Administration and Distribution: In Brief*, by Erica A. Lee and Kavya Sekar; FEMA, "Federally Supported Community Vaccination Centers," <https://www.fema.gov/disaster/coronavirus/vaccine-support/vaccine-center>; and FEMA, "Community Vaccination Centers Playbook," Final version, https://www.fema.gov/sites/default/files/documents/fema_community-vaccination-centers_playbook_04-23-2021.pdf.

¹¹³ FEMA, "Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (Version 2)," FEMA Policy #104-21-0004, pp. 6-9, https://www.fema.gov/sites/default/files/documents/fema_public-assistance-covid-19-medical-care-v2-with-equity-job-aid_policy_3-15-2021.pdf.

¹¹⁴ FEMA, "FEMA Funds Community Engagement for COVID-19 Vaccinations," May 12, 2021, <https://www.fema.gov/fact-sheet/fema-funds-community-engagement-covid-19-vaccinations>; FEMA, "FEMA Public Assistance Supports COVID-19 Vaccine Administration to Children," provided by FEMA Congressional and Legislative Affairs, Nov. 3, 2021; and FEMA, "FEMA Support for COVID-19 Vaccination Efforts Continues," Sept. 20, 2021, https://www.fema.gov/sites/default/files/documents/FEMA_Advisory_FEMA_Support_for_COVID-19_Vaccination_Efforts_Continues_09202021.pdf.

Figure 4. Duration of Select FEMA Lines of Effort in Federal Pandemic Response



Source: CRS Analysis of FEMA Pandemic-Specific Guidance and Documentation of Response Efforts.

Notes:

- At any time, FEMA may announce an end to the “incident period” that marks the period during which the pandemic occurred. Separately, FEMA policy notes that Public Assistance for pandemic-related costs will be available on an ongoing basis; FEMA will provide at least 30 days’ notice prior to its conclusion. For further discussion on the duration of Stafford Act declarations and Public Assistance, see CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister.
- The Community Based Testing Sites initiative involved multiple phases; this graph reflects phases in which FEMA was directly involved. The White House announced the establishment of new federal surge testing sites in December 2021, supported in part by FEMA. The White House, “President Biden Announces New Actions to Protect Americans and Help Communities and Hospitals Battle Omicron,” Dec. 21, 2021; FEMA, “FEMA Funding for the Safe Opening and Operating of Schools, Including Testing,” Jan. 18, 2022.
- FEMA began accepting applications for Funeral Assistance on Apr. 12, 2021 for deaths attributed to COVID-19 since Jan. 20, 2020.

Considerations for Congress

The following section identifies considerations and policy options for Congress in four areas critical to FEMA's role in the federal pandemic response: the Stafford Act, FEMA's operations and organization, the Defense Production Act (DPA), and the Disaster Relief Fund.

Stafford Act Legislative Considerations

The following section identifies policy considerations specific to FEMA's authorities under the Stafford Act and their relevance to the federal COVID-19 pandemic response.

Applicability of Stafford Act to Public Health Incidents

The design of the Stafford Act might complicate activations for public health incidents. Presidents generally activate the Stafford Act to respond to rapid-onset events that cause measurable losses in a specific geographic area (e.g., tornadoes), in contrast to ongoing infectious disease incidents that spread across whole regions.¹¹⁵ As noted above, the federal government mobilized and adapted the Stafford Act in unprecedented ways to respond to the COVID-19 pandemic.

Under the Stafford Act, governors or tribal chief executives may request an emergency or major disaster declaration only when an incident is “of such severity and magnitude” that state, local, tribal, or territorial governments are unable to effectively respond without supplemental federal assistance.¹¹⁶ FEMA defines the time interval during which the disaster-causing incident occurs as the “incident period.”¹¹⁷ Per FEMA regulations, Stafford Act assistance shall only alleviate “the damage or hardship ... which took place during the incident period or was in anticipation of that incident.”¹¹⁸ FEMA weighs the monetary value of structural damages incurred during the incident period when evaluating a state's capacity to respond to an incident, and then makes a recommendation to the President regarding the state's request for a declaration.¹¹⁹

Infectious disease incidents are diffuse and develop over a significant period of time without damaging infrastructure; they do not conform to the temporal and geographic limits built into FEMA's declaration process. The lack of measurable physical damage might make it difficult to determine whether the infectious disease outbreak is beyond the state's response capacity under the current assessment framework. Similarly, it may be difficult for FEMA to determine the geographic areas eligible for federal assistance and establish incident periods for pandemics.

Additionally, policymakers may be concerned that definitions within the Stafford Act limit declarations for future infectious disease outbreaks and pandemics. Under the Stafford Act, emergencies are defined broadly as follows:

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

¹¹⁵ For more information, see CRS Report R42702, *Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay.

¹¹⁶ Stafford Act Sections 401 and 501; 42 U.S.C. §§5170, 5191.

¹¹⁷ 44 C.F.R. §206.32(f).

¹¹⁸ *Ibid.*

¹¹⁹ For information on the damage assessment process, see CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.¹²⁰

The broad definition of an emergency arguably provides the President with the discretion to declare emergencies for a range of incidents, including infectious disease outbreaks and pandemics. However, the scope of emergency assistance is fairly limited. By contrast, the Stafford Act authorizes a wider range of federal assistance for major disasters, defined as:

any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.¹²¹

While President Trump and President Biden determined that pandemics could be included within the definition of major disaster (which does not explicitly list infectious disease outbreaks or pandemics), future administrations could view the list to more narrowly constrain the meaning of “any natural catastrophe.” If so, requests for disease outbreaks and pandemics could be denied in the future on the basis that they do not meet the legal definition of a major disaster.¹²²

If Congress wants to broaden the applicability of the Stafford Act to include future infectious disease incidents, it could require FEMA to update its regulations accordingly. The effort may require identification of metrics that may accurately measure a state’s response capacity with respect to infectious disease outbreaks. Towards this end, Congress might consider directing FEMA to clearly measure hazard losses beyond structural damages. Congress could alternatively consider amending the Stafford Act to include infectious disease outbreaks and pandemics. Others may disagree and argue that such incidents should not be eligible for major disaster assistance, and propose to amend the definition of major disasters to specifically exclude them.

Clarification of Roles and Leadership for Public Health Incidents

Federal planning, including a pandemic response plan adapted for COVID-19, envisioned HHS—not FEMA—as the lead federal agency for pandemic response (for more detail, see “Federal Response Doctrine: FEMA’s Planned Role in Infectious Disease Incidents”).¹²³ When warranted, these plans also allowed for parallel leadership, whereby HHS would lead federal public health and medical response, and FEMA would coordinate intergovernmental consequence management. The Public Health Service Act specifies that the HHS Secretary shall lead federal public health response efforts for declared Public Health Emergencies.¹²⁴ Separately, the Homeland Security Act and the Stafford Act (by delegated authority) direct the FEMA

¹²⁰ Stafford Act Section 102(1); 42 U.S.C. §5122(1).

¹²¹ Stafford Act Section 102(2); 42 U.S.C. §5122(2).

¹²² For example, FEMA explained that Governor Rick Snyder’s (Michigan) request for a major disaster declaration for the Flint water contamination incident was denied based on the grounds that it did not meet the definition of a major disaster. Letter from W. Craig Fugate, FEMA Administrator, to Rick Snyder, Governor of Michigan, Jan. 16, 2016; reprinted in CRS Report R46665, *Stafford Act and Selected Federal Recovery Programs for Civil Unrest: Historical Perspectives and Policy Observations*, coordinated by Bruce R. Lindsay.

¹²³ HHS, *PanCAP-Adapted*.

¹²⁴ Public Health Service Act Section 2801; 42 U.S.C. §300hh.

Administrator to coordinate federal disaster response efforts.¹²⁵ Officials issued declarations for the pandemic under both statutes, introducing multiple leadership roles.¹²⁶

In practice, the presence of multiple leadership roles generated confusion. GAO reported confusion among nonfederal governments and healthcare providers; one local public health official called the early federal response “incoherent, confusing, and uncoordinated.”¹²⁷ Subsequently, FEMA reported that headquarters staff did not clearly understand the responsibilities of the Unified Coordination Group directing the whole-of-government response or interagency operational working groups that transitioned from HHS to FEMA.¹²⁸ The National Homeland Security Consortium (NHSC), a body comprising SLTT associations, emergency management associations, and private-sector stakeholders, among others, identified an initial problem of the federal response as follows:

The federal government’s messaging was neither unified nor consistent. The failure to implement a national strategy or plan led to states, localities, tribes, and territories (SLTTs) issuing guidance that was inconsistent with federal guidance. The guidance changed constantly, which further confused the public and led to lost credibility.... This event tested the limits of the national response doctrine—in particular NIMS/ICS—and agencies’ understanding of how to implement it, for prolonged, nontraditional, complex incidents.¹²⁹

These findings echoed those of pre-pandemic GAO and HHS assessments that unclear, conflicting authorities persist in federal public health response plans, presidential directives, and statutes.¹³⁰ FEMA has acknowledged that HHS’s and FEMA’s “parallel and overlapping authorities” in federal response doctrine challenged pandemic response planning and operations.¹³¹

Additional challenges emerged following the establishment of the White House Coronavirus Task Force led by the Vice President, which was not envisioned by pre-pandemic plans and authorities.¹³² FEMA reported that the Task Force, which included the FEMA Administrator and the HHS Secretary, effectively worked with FEMA senior officials.¹³³ However, FEMA also

¹²⁵ The Post-Katrina Emergency Management Reform Act amended the Homeland Security Act to specify that the FEMA Administrator “shall ... lead the Nation’s efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other manmade disasters, including catastrophic incidents.” (Section 503(2)(A) of the Homeland Security Act, as amended); 6 U.S.C. §313(2)(A). Stafford Act Sections 402(1)-(2), 403(a), and 502(a)(1)-(2); 42 U.S.C. §§5170a(a)-(2), 5170b(a), and 5192(a)(1)-(2), provide the President authority to direct and coordinate federal disaster and emergency response authorities. These authorities have been delegated to FEMA as well as the Secretary of the Department of Homeland Security, who has then delegated them to the FEMA Administrator. FEMA, *Disaster Operations Legal Reference*, V 4.0, Sept. 25, 2020, pp. xxv-xxxii, available at https://oregondisasterlegalservices.org/wp-content/uploads/2020/10/DOLR_4_09252020.pdf.

¹²⁶ While previous incidents received declarations under both statutes, the scale of the pandemic and involvement of every federal agency exacerbated confusion regarding agency roles and hierarchies.

¹²⁷ See, for example, GAO, *Federal Efforts*, pp. 93-94.

¹²⁸ FEMA, *Initial Assessment Report*, pp. 8; 25, 32-33; 36-37; 39; 80.

¹²⁹ NHSC, *Pandemic After-Action Report*, p. 8.

¹³⁰ GAO, *Influenza Pandemic: Gaps in Pandemic Planning and Preparedness Need to Be Addressed*, GAO-09-909T, July 29, 2009, p. 8; GAO, *Defense Civil Support: DOD, HHS, and DHS Should Use Existing Coordination Mechanisms to Improve Their Pandemic Preparedness*, GAO-17-150, Feb. 10, 2017, pp. 18-22; <https://www.gao.gov/products/gao-17-150>; HHS, *Crimson Contagion 2019 Functional Exercise After-Action Report 2020*, Jan. 2020, pp. 17, 19, 24-25, 29-31, 34-35.

¹³¹ FEMA, *Initial Assessment Report*, p. 31.

¹³² FEMA, *Initial Assessment Report*, p. 34; GAO, *Biodefense: After-Action Findings*, p. 26.

¹³³ *Ibid.*

reported that daily engagement with the White House caused the agency to undertake additional efforts to ensure communication was consistent across the agency and subfederal partners. The GAO found that conflicting messaging from the White House Coronavirus Task Force and federal agencies may have contributed to confusion among subfederal stakeholders.¹³⁴

Members of Congress, oversight bodies, the news media, stakeholders from the healthcare industry and state, local, tribal, and territorial governments have repeatedly called upon the government to clarify agency roles and clearly identify responsibility and decision-making authority for specific lines of effort and the federal response on the whole.¹³⁵ In its initial self-assessment on the agency's COVID-19 response efforts, FEMA also recommended that the federal government clarify agency authorities, roles, and financial responsibilities for public health incidents.¹³⁶ The NHSC recommended that the federal government update and promulgate a national strategy, framework, and plan for pandemics.¹³⁷

Congress may consider clarifying statutory authorities and roles in large-scale public health incidents declared under both the Public Health Service Act and the Stafford Act. Neither the Stafford Act nor FEMA regulations currently specify how FEMA shall coordinate with HHS in public health incidents declared under the Stafford Act; Congress could amend the statute or direct the agencies to issue relevant rulemaking following analysis of agency after-action reports. Notably, in September 2020, GAO recommended that HHS, in consultation with FEMA, clarify roles and responsibilities with respect to pandemic supply chain management and supply gaps—recommendations that remained open as of September 2021.¹³⁸

Emergency managers, experts, and SLTT stakeholders have proposed possible leadership structures.¹³⁹ The International Association of Emergency Managers (IAEM) recommended that President Biden, upon assuming office “formally designate FEMA as THE lead agency for all hazards Incident Coordination across the federal government enterprise to include Stafford Act and non-Stafford Act events” and reinstate the FEMA Administrator’s membership in the

¹³⁴ GAO, *Federal Efforts*, pp. 76, 94.

¹³⁵ See, for example, GAO, *COVID-19: Opportunities*, pp. 65-66; GAO, *Federal Efforts*, p. 94; GAO, “Priority Open Recommendations: Department of Homeland Security,” Aug. 13, 2021, p. 4, <https://www.gao.gov/assets/gao-21-377pr.pdf>; NHSC, *Pandemic After-Action Report*, pp. ii, 6; Testimonies of Rep. Payne and Rep. Thompson, in House Homeland Security Committee, *Federal And State Pandemic Supply Preparedness and Response*; Priscilla Alvarez et al., “Confusion and Frustration Still Reign a Week After FEMA Takes over Coronavirus Response,” *CNN*, Mar. 27, 2020; Testimony of Heather Krause, U.S. Congress, House Committee on Transportation and Infrastructure, “House Transportation and Infrastructure Committee, *Assessing the Federal Government’s COVID-19 Relief and Response Efforts and Its Impact*,” hearing, 117th Cong., 1st sess., July 29, 2021 (hereinafter House T&I, *Federal Response Efforts*); IAEM, “IAEM Recommendations for Action During the First 100 Days of the Administration of President-Elect Biden,” Dec. 2020, <https://www.iaem.org/Portals/25/documents/IAEM-Recommendations-to-the-Biden-Transition-Team.pdf> (hereinafter IAEM, “Recommendations for Action”).

¹³⁶ FEMA, *Initial Assessment Report*, pp. 22-23, 31-33.

¹³⁷ NHSC, *Pandemic After-Action Report*, p. 8.

¹³⁸ These GAO recommendations were most recently reviewed in September 2021. GAO, *Federal Efforts*, pp. 1-2. These recommendations build on pre-pandemic GAO recommendations to clarify roles and responsibilities in national biodefense strategy. See GAO, *National Biodefense Strategy: Additional Efforts Would Enhance Likelihood of Effective Implementation*, GAO-20-273, Feb. 2020.

¹³⁹ For scholarly analysis of these and other alternatives, see, for example, Daniel Gerstein, “Assessing the US Government Response to the Coronavirus,” July 20, 2020, *Bulletin of the Atomic Scientists*, pp. 166-174; David Carter and Peter May, “Making Sense of the U.S. COVID-19 Pandemic Response: A Policy Regime Perspective,” *Administrative Theory and Praxis*, May 5, 2020, pp. 265-277; Roy Guharoy and Edward Krenzelok, “Lessons from the Mismanagement of the COVID-19 Pandemic: A Blueprint to Reform CDC,” *American Journal of Health-System Pharmacy*, vol. 78, iss. 18, Sept. 15, 2021, pp. 1739-1741.

President's cabinet.¹⁴⁰ The National Homeland Security Consortium issued a similar recommendation while noting that "[c]onsensus was not achieved ... on this recommendation. At least one association maintained that as a public health disaster, public health at the state and national level should be the lead coordinating agency."¹⁴¹ Alternatively, prior to the COVID-19 pandemic, the Bipartisan Commission on Biodefense (a private organization assessing U.S. biodefense efforts) identified deficiencies in historical iterations of agency leadership and recommended that the Vice President lead federal biodefense efforts under the auspices of a White House Biodefense Coordination Council.¹⁴²

Adaptation of Stafford Act Public Assistance for the Pandemic

The President's Stafford declarations for the pandemic authorized FEMA Public Assistance (PA) for emergency protective measures for jurisdictions nationwide. Prior to the pandemic, no President had ever mobilized the PA program, FEMA's largest federal grant program, as a primary instrument to respond to an infectious disease event.¹⁴³

The PA program generally operates following incidents clearly delimited in time and space (e.g., hurricanes); the pandemic compelled FEMA to make rapid pandemic-specific adaptations for long-term response efforts across the country.¹⁴⁴ For example, federal regulations provide that emergency response activities funded through PA be completed within six months of a declaration, though extensions may be granted.¹⁴⁵ For the pandemic, the President directed that the PA program provide reimbursement and direct assistance for eligible measures from January 20, 2020 to beyond July 2022—more than two and a half years.¹⁴⁶ The PA program may additionally provide assistance beyond that time frame, subject to presidential and agency discretion.¹⁴⁷

The President and FEMA have also deployed PA to provide financial reimbursement and direct assistance for novel uses. For the pandemic, FEMA will reimburse Applicants for eligible costs incurred for work required to safely reopen and operate designated facilities (e.g., the purchase of

¹⁴⁰ IAEM, "Recommendations for Action." The FEMA Administrator was a member of the President's Cabinet from 1996-2001. For more information, see DHS Office of Inspector General, *FEMA: In or Out?* OIG-09-25, Feb. 2009, https://www.oig.dhs.gov/assets/Mgmt/OIG_09-25_Feb09.pdf.

¹⁴¹ NHSC, *Pandemic After-Action Report*, p. 19.

¹⁴² Bipartisan Report of the Blue Ribbon Study Panel on Biodefense (now Bipartisan Commission on Biodefense), *A National Blueprint for Biodefense*, Oct. 2015, pp. 6-7, 9, 15, <https://biodefensecommission.org/wp-content/uploads/2015/10/NationalBluePrintNov2018-03.pdf>.

¹⁴³ See CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Erica A. Lee and Bruce R. Lindsay.

¹⁴⁴ See FEMA's website "Public Assistance Disaster-Specific Guidance—COVID-19 Declarations," <https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations>.

¹⁴⁵ 44 C.F.R. §206.205(c).

¹⁴⁶ President Joseph R. Biden, Jr., "Memorandum for the Secretary of Homeland Security and the Administrator of the Federal Emergency Management Agency on Maximizing Assistance to Respond to COVID-19," Nov. 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/09/memorandum-for-the-secretary-of-homeland-security-and-the-administrator-of-the-federal-emergency-management-agency-on-maximizing-assistance-to-respond-to-covid-19/>; President Joseph R. Biden, Jr. "Memorandum on Maximizing Assistance to Respond to COVID-19," Mar. 1, 2022, Memorandum on Maximizing Assistance to Respond to COVID-19 | The White House; FEMA Advisory: "COVID-19 Cost Share Extension," Mar. 1, 2022.

¹⁴⁷ See, for example, "Time Limitations," in FEMA, "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)," FEMA Policy FP 104-009-19, Sept. 1, 2020, https://www.fema.gov/sites/default/files/2020-09/fema_policy_104-009-19_PA-eligibility-policy-covid.pdf.

PPE for schools, disinfection, surveillance testing), provide ongoing non-congregate sheltering for at-risk and exposed individuals, and execute a wide range of work related to vaccination assistance.¹⁴⁸ These novel applications may modify interpretations of what assistance FEMA may provide under the Stafford Act's nonexclusive list of emergency response measures.¹⁴⁹

Further, President Biden increased the federal cost share that FEMA will reimburse for PA-eligible costs from the statutory floor of 75% to 100% for all jurisdictions nationwide. Prior to that, SLTT governments and eligible healthcare organizations, including nonprofits, noted the challenge of meeting the fiscal burdens of the 25% cost share, as well as providing the up-front costs of eligible work before requesting reimbursement.¹⁵⁰ FEMA has observed that the increased federal cost share for pandemic response and the expansion of PA-eligible work (to include reopening costs and enhanced vaccination assistance) significantly increased projected obligations in FY2021.¹⁵¹

These pandemic-era changes to PA raise questions about future uses of, and expectations for, the PA program.¹⁵² Congress might consider challenges related to the program's adaptation when considering how, if at all, PA should be mobilized for hazards with nationwide impacts, like infectious disease events and climate change. Should Congress affirm the program's relevance for future public health incidents, Congress may consider whether existing PA authorities for response are sufficient or should be expanded,¹⁵³ and whether to clarify the eligibility of certain activities, including vaccination-related assistance, the costs of reopening and operating facilities during infectious disease incidents, and the ongoing costs of non-congregate sheltering for eligible populations. Alternatively, Congress might prefer narrower interpretations of the Stafford Act's list of eligible expenses and further limit the statute's authorities.

Novel projects funded by PA during the pandemic may be relevant to these discussions. The state of California used the PA program to create Project Roomkey, which provided hotel and motel rooms to individuals experiencing homelessness in an effort to mitigate the risk of COVID-19 transmission associated with congregate shelters, and thereby reducing the strain on the health care system.¹⁵⁴ Similarly, FEMA and the President made PA available to reimburse food banks and restaurants for 100% of the costs of purchasing and distributing meals to eligible individuals.¹⁵⁵ Evaluating such innovative uses of PA might help agency heads and Congress as

¹⁴⁸ See FEMA's website "Public Assistance Disaster-Specific Guidance - COVID-19 Declarations," <https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations>.

¹⁴⁹ Stafford Act Section 403(a); 42 U.S.C. §5170b(a).

¹⁵⁰ See Testimony of J. Ryan McMahon II, County Executive, Onondaga County, New York, in U.S. Congress, House Committee on Homeland Security, *Confronting the Coronavirus: Perspectives on the COVID-19 Pandemic One Year Later*, 117th Cong., 1st sess., Feb. 24, 2021 (hereinafter House Homeland Security Committee, *Confronting the Pandemic*).

¹⁵¹ FEMA, Disaster Relief Fund: Monthly Report as of April 30, 2021, May 11, 2021, Fiscal Year 2021 Report to Congress, p. 24; Disaster Relief Fund: Monthly Report as of July 31, 2021, Aug. 10, 2021, p. 26; FEMA, Disaster Relief Fund: Monthly Report as of September 30, 2021, Oct. 7, 2021, p. 27. Reports available at <https://www.fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports>.

¹⁵² For background about the PA program, its scope, and expense, see CRS Report R46749, *FEMA's Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee.

¹⁵³ See, for example, an expanded list of eligible measures in S. 4627/H.R. 8266, "FEMA Assistance Relief Act of 2020," 116th Cong., 2nd sess.

¹⁵⁴ California Department of Social Services, "Project Roomkey/Housing and Homelessness COVID Response," <https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/project-roomkey>.

¹⁵⁵ FEMA, "Coronavirus (COVID-19) Pandemic: Purchase and Distribution of Food Eligible for Public Assistance," FEMA Policy FP 104-010-03, Apr. 11, 2020, https://www.fema.gov/sites/default/files/2020-07/fema_covid_purchase-

they determine whether and how the program may be deployed for future unconventional or long-duration incidents.¹⁵⁶

Congress may also note the logistical challenges posed by the program's nationwide use during the pandemic that may have delayed assistance and hampered SLTT response efforts. For instance, many stakeholders expressed confusion and frustration attributed to regional inconsistencies in program delivery and eligibility determinations.¹⁵⁷ In response, GAO recommended in October 2021 that FEMA clarify PA eligibility requirements nationwide and require additional training for the agency's PA employees to promote consistent policy interpretations within and across FEMA regions.¹⁵⁸ How, if at all, the regionally-administered PA program should change in the wake of these challenges remains an open question.

Adaptation of Stafford Act Individual Assistance for the Pandemic

FEMA's IA program was adapted to support the pandemic response, providing an unprecedented amount of assistance through Other Needs Assistance (ONA) for COVID-19 Funeral Assistance and the Lost Wages Assistance (LWA) program.¹⁵⁹ In a July 19, 2021 press release, FEMA stated that it "has provided over \$710 million to more than 107,000 people to assist with COVID-19-related funeral costs."¹⁶⁰ and, as of the publication of this report, there is no deadline to apply for COVID-19 Funeral Assistance.¹⁶¹ Moreover, FEMA provided approximately \$40 billion through the LWA program to participating states, territories, and the District of Columbia.¹⁶² The agency's initial self-assessment lauded the speed with which it awarded LWA grants and the amount of funding obligated through the program.¹⁶³ FEMA also acknowledged that the CCP was authorized

and-distributions-of-food_policy.pdf; CRS Report R46432, *Food Banks and Other Emergency Feeding Organizations: Federal Aid and the Response to COVID-19*, coordinated by Kara Clifford Billings.

¹⁵⁶ See Karen Stabiner, "What If We Turned Restaurants into Government Contractors," *The Counter*, Feb. 11, 2021, <https://thecounter.org/biden-fema-reimbursement-restaurants-food-aid/>; FEMA, "COVID-19 Community Food Distribution Community Innovations," July 2020, https://www.fema.gov/sites/default/files/2020-07/fema_covid_food_distribution_ci-story_june1.pdf; "New FEED Act to Address Food Insecurity with Help from Restaurants," July 2020, *FoodTank*, <https://foodtank.com/news/2020/07/new-feed-act-to-address-food-insecurity-with-help-from-restaurants/>.

¹⁵⁷ GAO, *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, GAO-22-105051, October 2021, pp. 23-24, 353-366, <https://www.gao.gov/assets/gao-22-105051.pdf>.

¹⁵⁸ *Ibid.*

¹⁵⁹ FEMA's "Disaster Relief Fund Monthly Report" includes Individual Assistance program obligations for catastrophic disasters. For the COVID-19 declarations, the estimated Individual Assistance total through FY2021 is \$41.8 billion (and financial assistance to individuals and households was only provided for ONA). By contrast, the estimated total through FY2021 for Hurricanes Harvey, Irma, and Maria combined is \$6.0 billion (and, for these disasters, financial assistance was provided for both housing assistance and ONA) (FEMA, *Disaster Relief Fund: Monthly Report as of June 30, 2021*, July 12, 2021, https://www.fema.gov/sites/default/files/documents/fema_july-2021-disaster-relief-fund-report.pdf). See also Statement of Heather Krause, Director, Physical Infrastructure, and Chris P. Currie, Director, Homeland Security and Justice, GAO, *Testimony Before Committee on Transportation and Infrastructure, House of Representatives, COVID-19 Pandemic: Actions Needed to Improve Federal Oversight of Assistance to Individuals, Communities, and the Transportation Industry*, GAO-21-105202, July 29, 2021, p. 3, <https://www.gao.gov/assets/gao-21-105202.pdf>.

¹⁶⁰ FEMA, "FEMA COVID-19 Funeral Assistance Tops \$700 Million," press release HQ-21-138, July 19, 2021, <https://www.fema.gov/press-release/20210719/fema-covid-19-funeral-assistance-tops-700-million>.

¹⁶¹ FEMA, "Funeral Assistance FAQ," <https://www.fema.gov/disaster/coronavirus/economic/funeral-assistance/faq>.

¹⁶² FEMA, "By the Numbers: Coronavirus Pandemic Whole-of-America Response," press release, Mar. 8, 2021. The Lost Wages Assistance total of "[a]lmost \$40 billion for those who were unemployed due to COVID-19 through Dec. 27, 2020" was provided as of the COVID-19 obligations as of Mar. 4, 2021. FEMA's "By the Numbers: Lost Wages Assistance Totals," Feb. 9, 2021, lists the LWA total as \$42.6 billion.

¹⁶³ FEMA, *Initial Assessment Report*, p. 5.

for all of the states, the District of Columbia, and Puerto Rico, Guam, and the U.S. Virgin Islands, and that all tribal nation members were eligible for CCP services.¹⁶⁴ Additional consideration of the pandemic-caused needs of individuals and households is not addressed in FEMA's self-assessment. Congress could consider requiring FEMA to evaluate whether the IA provided to support COVID-19 pandemic recovery—which has been limited to ONA and CCP—has been sufficient to meet the needs of affected individuals and households. Congress could also consider whether FEMA may require additional authorities to meet the needs of disaster-affected individuals and households following a future pandemic or infectious-disease incident.¹⁶⁵

Disasters commonly create economic hardships for individuals and families, and the COVID-19 pandemic was no different. During the first few months of the pandemic response, Congress considered the federal government's options for providing housing assistance payments to individuals experiencing financial hardship due to the pandemic. FEMA does not have the statutory authority to provide temporary rental or mortgage payments when people experience disaster-caused financial hardship. Currently, FEMA's Rental Assistance program¹⁶⁶ is premised on an individual being displaced from their primary residence (e.g., because it is uninhabitable or inaccessible).¹⁶⁷ However, this has not always been the case. Prior to May 2002, the Stafford Act authorized assistance to disaster survivors unable to make mortgage or rental payments. Section 206 of the Disaster Mitigation Act of 2000 (DMA2K; P.L. 106-390) amended the Stafford Act to remove temporary mortgage and rental payments, and added the language predicated assistance on displacement.¹⁶⁸ DMA2K was generally intended to control the federal cost of disaster assistance.¹⁶⁹ Congress may require FEMA to evaluate whether its housing assistance programs are adequate and appropriate to meet the needs of survivors following disasters that result in economic (rather than physical) damages—as this was a gap that was revealed by the economic effects of the COVID-19 pandemic.¹⁷⁰

¹⁶⁴ FEMA, *Initial Assessment Report*, pp. 26, 87.

¹⁶⁵ For example, Congress may wish to consider whether there is a need to clarify the LWA program's authority. FEMA stated that they were using the LWA authority, rather than the existing Stafford Act Section 410 authority to provide Disaster Unemployment Assistance (DUA), because "DUA is very limited and only available to individuals who aren't eligible for regular Unemployment Insurance (UI). The President's authorization for a \$300 lost wages payment from FEMA is for a supplemental payment on top of UI paid by the state, territory and the District of Columbia. Also, DUA is limited to what regular UI in the state, territory and the District of Columbia would pay out so it can't be used to supplement regular UI." FEMA, "Frequently Asked Questions About Receiving Supplemental Payments for Lost Wages," Aug. 16, 2021, <https://www.fema.gov/disaster/coronavirus/governments/supplemental-payments-lost-wages/frequently-asked-questions>.

¹⁶⁶ 42 U.S.C. §5174(c)(1)(A).

¹⁶⁷ 42 U.S.C. §5174(b)(1); see also FEMA, *IAPPG*, pp. 80-81.

¹⁶⁸ See the prior version of the Stafford Act's provision of temporary rental or mortgage payments at 42 U.S.C. §5174(b), (2001), <https://www.govinfo.gov/content/pkg/USCODE-2001-title42/pdf/USCODE-2001-title42-chap68-subchapIV-sec5174.pdf>.

¹⁶⁹ U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Mitigation and Cost Reduction Act of 1999*, 106th Cong., 1st sess., Mar. 3, 1999, H.Rept. 106-40, pp. 1, 12, 17, <https://www.congress.gov/106/crpt/hrpt40/CRPT-106hrpt40.pdf>; see also U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety, *Review of the General Accounting Office Report on FEMA's Activities After the Terrorist Attacks on September 11, 2001*, 108th Cong., 1st sess., Sept. 24, 2003, S.Hrg. 108-364, p. 253.

¹⁷⁰ FEMA has evaluated its housing solutions following disasters, including following Hurricanes Harvey, Irma, and Maria in its *2017 Hurricane Season FEMA After-Action Report*, July 12, 2018, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf. Additionally, in several of its reports on FEMA's housing assistance programs, the GAO has recommended FEMA evaluate its housing solutions (see, for examples, GAO, *Disaster Housing: Improved Cost Data and Guidance Would Aid FEMA Activation Decisions*, GAO-21-116, Dec. 2020, p. 21, <https://www.gao.gov/assets/gao-21-116.pdf>; and GAO, *U.S. Virgin Islands Recovery: Additional*

Hazard Mitigation Funding for Pandemic Stafford Act Declarations

FEMA's role in responding to the pandemic may prompt stakeholders, including Congress and the agency itself, to consider the timeline and scale of Hazard Mitigation Assistance funding available nationwide through the Stafford Act declarations for the pandemic.

The Hazard Mitigation Grant Program is authorized by Stafford Act Section 404—Hazard Mitigation¹⁷¹ and is funded through the Disaster Relief Fund (DRF). HMGP funding is available to all areas of a state, territory, or tribal lands where it is requested by a governor or tribal chief executive following a major disaster declaration (or the approval of a Fire Management Assistance Grant). At the state, tribe, or territory's request, HMGP may also be available statewide.

HMGP funding is awarded as a formula grant to a state. The amount of the grant is based on the estimated total federal assistance per major disaster declaration or Fire Management Assistance Grant, subject to a sliding scale formula. For each declaration, a state receives a percentage of the total amount of FEMA assistance awarded to the state for that disaster; in other words, the state receives

- up to 15% of the first \$2 billion of aggregate amount of disaster assistance,
- up to 10% for aggregate amounts of assistance between \$2 billion and \$10 billion, and
- up to 7.5% for aggregate amounts of assistance between \$10 billion and \$35.333 billion.¹⁷²

States that have an Enhanced State Hazard Mitigation Plan¹⁷³ under section 322(e) of the Stafford Act can receive 20% of the total amount.¹⁷⁴

HMGP-funded projects must provide a long-term solution to a problem, rather than immediate disaster response or recovery activities. The state, territory, or tribal government can use HMGP funding for mitigation projects for any type of natural hazard and for any eligible activity that reduces risk and builds resilience. HMGP funding does not have to be used for the particular disaster for which it was allocated, nor for the particular type of disaster. For example, funding allocated for wildfires in one county could be used for flood mitigation activities in a different county, if the state chooses to do so and the activity is eligible.

All 50 states, five territories, the District of Columbia, and three tribes¹⁷⁵ requested HMGP funding for the pandemic disaster declarations. FEMA announced on August 5, 2021, that every state, tribe, and territory that received a major disaster declaration for COVID-19 will be eligible to receive 4% of their total pandemic-related Stafford Act assistance in HMGP funding.¹⁷⁶ Four

Actions Could Strengthen FEMA's Key Disaster Recovery Efforts, GAO-20-54, Nov. 2019, p. 44, <https://www.gao.gov/assets/gao-20-54.pdf>.

¹⁷¹ 42 U.S.C. §5170c.

¹⁷² 42 U.S.C. §5170c(a) and 44 C.F.R. §206.432(b).

¹⁷³ 44 C.F.R. §201.5.

¹⁷⁴ As of June 31, 2021, 14 states have approved Enhanced State Hazard Mitigation Plans. See FEMA, *Hazard Mitigation Plan Status*, <https://www.fema.gov/emergency-managers/risk-management/hazard-mitigation-planning/status>.

¹⁷⁵ The three tribes are the Navaho Nation, the Poarch Band of Creek Indians, and the Seminole Tribe of Florida.

¹⁷⁶ FEMA, "COVID-19 Disaster Declarations, Hazard Mitigation Grant Program Allocations for COVID-19 Declarations," Aug. 5, 2021, <https://www.fema.gov/disaster/coronavirus/disaster-declarations>.

percent is a lower percentage than is usually awarded for HMPG, but the total funding of \$3.46 billion represents the largest amount of HMGP funding in a single fiscal year.¹⁷⁷ (The largest amount previously was \$2.29 billion in FY2005, following the extreme 2005 hurricane season.)¹⁷⁸ As with all HMGP funding, the State determines where the funding can best be used and how to allocate HMGP funds to sub-applicants, which means this funding does not have to be used for pandemic-related mitigation activities. The largest amount of HMGP COVID-19 funding will go to Texas, followed by California, New York, Florida, and New Jersey (see **Figure 5**).

The Stafford Act declarations for the pandemic also made more funding available for the FEMA-administered pre-disaster mitigation grants through the Building Resilience Infrastructure and Communities (BRIC) program. BRIC is funded by a set-aside in the DRF equal to 6% of the estimated aggregate amount of funding awarded under seven sections of the Stafford Act.¹⁷⁹ As of December 31, 2021, there was \$1.81 billion set aside in the DRF for mitigation.¹⁸⁰ This sum far exceeds FEMA's expectation that this fund would receive \$300-500 million per year on average, based on historical disaster expenditures.¹⁸¹ However, in its first year of operation, FY2020, BRIC was over-subscribed, with over \$3.6 billion requested from the \$500 million available,¹⁸² suggesting that even the increased amount of pre-disaster mitigation funding due to the COVID-19 disaster declarations is not sufficient to meet demands.

Congress might note the unusual availability of hazard mitigation funding across the country due to the nationwide Stafford Act declarations. To be eligible for BRIC, applicants must have received a major disaster declaration within the previous seven years. All jurisdictions are thus currently eligible for BRIC due to the pandemic major disaster declarations, though that is unlikely to be the case in the future. Normally, it would be unlikely for every jurisdiction to have a major disaster declaration in the same year. Restricting pre-disaster mitigation funding to states which have experienced a disaster recently could preclude communities with a clear risk under a changing climate from receiving funding when that risk has not yet eventuated, and may make it more difficult for locations facing major impacts of climate change to plan ahead. For this reason, Congress may wish to consider whether these requirements should be relaxed. Congress may also wish to consider the unusual situation where disaster declarations for a public health incident with no physical damage has made funding available for physical mitigation activities.

¹⁷⁷ CRS analysis of FEMA OpenFEMA data set on Hazard Mitigation Assistance Projects—v2, <https://www.fema.gov/openfema-data-page/hazard-mitigation-assistance-projects-v2>. Accessed Nov. 21, 2021.

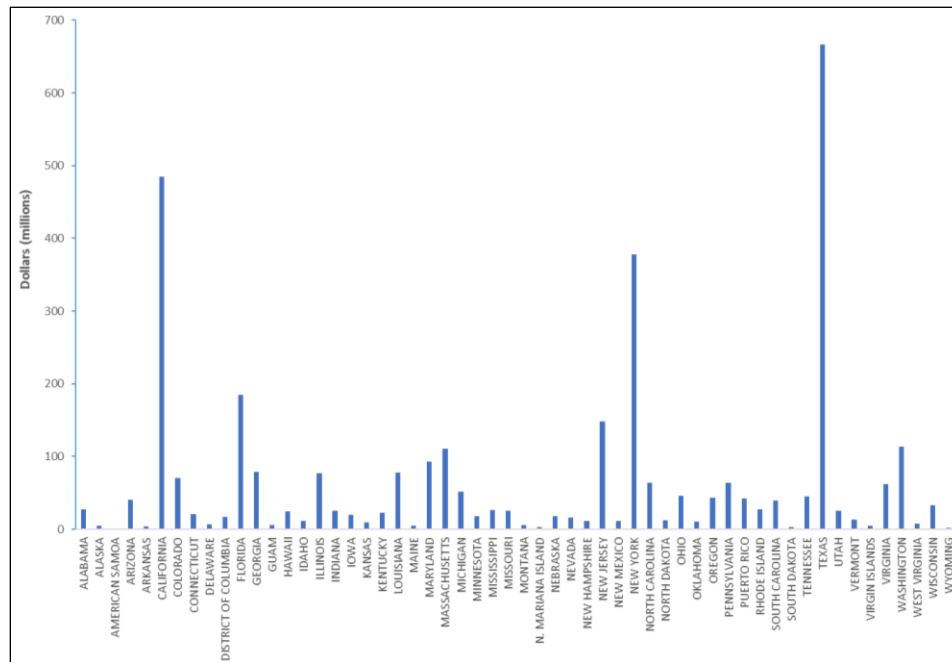
¹⁷⁸ *Ibid.*

¹⁷⁹ Stafford Act Sections 403 (essential assistance), 406 (repair, restoration and replacement of damaged facilities), 407 (debris removal), 408 (federal assistance to individuals and households), 410 (unemployment assistance), 416 (crisis counseling assistance and training), and 428 (public assistance program alternative program procedures). See CRS Report R45819, *The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions*, for further details.

¹⁸⁰ FEMA, *Disaster Relief Fund: Monthly Report as of December 31, 2021. Fiscal Year 2022 Report to Congress*, Jan. 7, 2022, p. 25, <https://www.fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports>.

¹⁸¹ U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Disaster Preparedness: DRRA Implementation and FEMA Readiness*, Serial No. 116-17, hearing, 116th Cong., 1st sess., May 22, 2019, p. 90, <https://www.congress.gov/116/chrg/CHRG-116hhrg40590/CHRG-116hhrg40590.pdf>.

¹⁸² FEMA, *Hazard Mitigation Assistance (HMA) Annual Grant Cycle Submissions Summary*, Mar. 17, 2021, <https://www.fema.gov/fact-sheet/hazard-mitigation-assistance-hma-annual-grant-cycle-submissions-summary>.

Figure 5. HMGP Funding for COVID-19 Disaster Declarations

Source: FEMA, *COVID-19 Disaster Declarations, Hazard Mitigation Grant Program Allocations for COVID-19 Declarations*, Aug. 5, 2021, <https://www.fema.gov/disaster/coronavirus/disaster-declarations>.

FEMA Preparedness and Response Operations

FEMA's Public Health Preparedness Coordination

Persistent challenges related to acquisition and delivery of diagnostic tests, production and management of PPE, and development and distribution of vaccines have introduced new questions about the state of national readiness for pandemics, as well as for other emergencies more broadly. This is not the first time the nation has evaluated its state of preparedness. In the wake of the much-criticized response to Hurricane Katrina, Congress directed the President to develop a stronger system for building national preparedness for all types of emergencies and disasters. In February of 2011, President Barack Obama issued Presidential Policy Directive 8 (PPD-8),¹⁸³ which established a National Preparedness Goal,¹⁸⁴ System, and Report to provide the nation with a framework for organizing preparedness activities. The strategies set forth in this doctrine govern how individuals, families, communities, localities, tribal nations, territories, states, and federal agencies can strengthen the security and resilience of the nation, even against pandemics. PPD-8 defines preparedness as “actions taken to plan, organize, equip, train, and exercise to build and sustain the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the Nation.”¹⁸⁵

¹⁸³ White House, “PPD-8: Announcing the National Preparedness Goal,” Oct. 7, 2011, <https://obamawhitehouse.archives.gov/blog/2011/10/07/ppd-8-announcing-national-preparedness-goal>.

¹⁸⁴ U.S. Department of Homeland Security, Federal Emergency Management Agency, *National Preparedness Goal*, <https://www.fema.gov/national-preparedness-goal>.

¹⁸⁵ White House, “PPD-8: Announcing the National Preparedness Goal,” Oct. 7, 2011,

The United States' national preparedness is based on capability planning¹⁸⁶ and the 32 core capabilities outlined by the National Preparedness Goal represent the critical competencies needed to address all types of emergencies, from local incidents addressed with local resources to national disasters involving presidential declarations under the Stafford Act.¹⁸⁷ While FEMA coordinates the federal government's preparedness broadly, HHS is largely responsible for the development of the national capability to perform public health, healthcare, and emergency medical services activities. FEMA supports HHS with preparedness guidance, training, exercise support for specific activities related to community resilience, information sharing, incident management, and medical countermeasures.¹⁸⁸

Although HHS generally takes the primary role for public health incident preparedness, responding to a pandemic requires several other adjacent capabilities, including public information and warning, logistics and supply chain management, situational assessment, operational coordination, and economic recovery. FEMA is the coordinator for logistics and information sharing activities at the federal level.¹⁸⁹

In May 2020, GAO released a report that identified actions necessary to address shortcomings in the nation's emergency management capabilities.¹⁹⁰ GAO stated that FEMA had yet to determine what steps were needed to address capability gaps at the federal, state, local, tribal, and territorial levels. GAO also concluded that FEMA had taken steps to strengthen national preparedness but has not fully identified capability gaps and determined what actions were needed to enhance national preparedness capabilities.¹⁹¹ To address these issues, GAO recommended the following:

Following the completion of the 2021 National Preparedness Report,¹⁹² determine what steps are needed to address the nation's emergency management capability gaps across all levels of government and inform key stakeholders, such as the Office of Management and Budget and Congress, about what level of resources will be necessary to address the known gaps.¹⁹³

<https://obamawhitehouse.archives.gov/blog/2011/10/07/ppd-8-announcing-national-preparedness-goal>.

¹⁸⁶ This planning includes developing and maintaining knowledge, skills, and abilities to address threats and hazards, in lieu of preparing for every potential scenario. For more information on these capabilities and FEMA's capability-based planning process, see FEMA, *Core Capabilities*, <https://www.fema.gov/core-capabilities>.

¹⁸⁷ For more information on responding to and recovering from major disasters, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, by Bruce R. Lindsay and Elizabeth M. Webster. The core capabilities are not the exclusive responsibility of any one government agency or organization. Instead, they require the combined efforts of the "whole community," including individuals and families, non-profit and religious organizations, private sector companies, schools, media outlets, as well as SLTT governments and federal partners.

¹⁸⁸ GAO, *Biodefense: After-Action*, p. 65.

¹⁸⁹ DHS, *NRF 2019*, pp. 39-41.

¹⁹⁰ U.S. Government Accountability Office, *National Preparedness: Additional Actions Needed to Address Gaps in the Nation's Emergency Management Capabilities*, GAO-20-297, May 4, 2020, (hereinafter GAO, *National Preparedness*), <https://www.gao.gov/products/GAO-20-297>.

¹⁹¹ *Ibid.*, p. 39.

¹⁹² In the DHS response to GAO's report, FEMA stated that it does not believe that the cost of national resource gaps can be estimated without first accounting for existing federal capabilities, which will be incorporated into the 2021 National Preparedness Report. The collection of necessary information was scheduled to begin in 2020, but was delayed due to the response operations for the COVID-19 pandemic. As such, GAO's recommendation has been updated to reflect the updated timeframe following the publication of the 2021 National Preparedness Report.

¹⁹³ GAO, *National Preparedness*, p. 39.

GAO went further in an August 2021 report and stated that the U.S. emergency response enterprise “lacked elements necessary for preparing for nationally significant biological incidents,” including:

- a set of defined capabilities that account for the unique elements specific to responding to nationally significant biological incidents; and
- a process at the interagency level for agencies to assess and communicate priorities for exercising capabilities and consistently reporting on those capabilities in after-action reviews.¹⁹⁴

Congress may wish to monitor implementation of GAO’s recommendations, and may also consider further clarifying the roles and responsibilities for pandemic preparedness between FEMA and HHS.

FEMA’s Preparedness Grants for Public Health Incidents

FEMA also supports the development of preparedness capabilities nationally through a number of grant programs. Some of these grants provide funding and resources for general emergency management and preparedness activities (e.g., Emergency Management Performance Grants). FEMA also administers grant programs that provide funding for preparedness equipment, training, and activities through the Homeland Security Grant Program, which is primarily¹⁹⁵ composed of the State Homeland Security Grant Program and the Urban Area Security Initiative. In the past, SLTTs have used these grants to develop their preparedness for public health emergencies by purchasing equipment such as PPE and by conducting training for biological weapons attacks. According to a GAO report published in May 2020, DHS awarded over \$52 billion in preparedness grants to SLTT partners to strengthen preparedness between FY2002 and FY2019.¹⁹⁶ Additionally, HHS also provides funding for public health preparedness through grant programs such as the Public Health Emergency Preparedness (PHEP) program and Hospital Preparedness Program (HPP). Prior to the pandemic, funding for preparedness grants from both agencies declined several times.¹⁹⁷

Given that Congress has appropriated funding for DHS preparedness grants for over 20 years, Congress may wish to evaluate its continued investment. Congress may evaluate the need for continued federal support and consider whether to reduce or eliminate funding. Some may argue that states and localities should assume more responsibility for funding their preparedness, and that the federal government should reduce its investment. Whether states and localities can support this change may depend on their financial condition. Alternatively, Congress may choose to maintain or increase present funding levels. Given the changing risk landscape, including the presentation of novel threats such as COVID-19 and its variants, preparedness stakeholders may need to develop new capacity and expand their capabilities. To support such changes, Congress might consider expanding the eligible uses for FEMA’s preparedness grants beyond its traditional aims to mitigate terrorism threats and redirect them towards public health applications.¹⁹⁸

¹⁹⁴ GAO, *Biodefense: After-Action Findings*, p. 30.

¹⁹⁵ FEMA’s Homeland Security Grant Program also includes funding for nonprofit security and jurisdictions on the U.S. southwest border. These two programs do not appear to provide funding that would support pandemic preparedness.

¹⁹⁶ GAO, *National Preparedness*, p. 3.

¹⁹⁷ See CRS Report R44669, *Department of Homeland Security Preparedness Grants: A Summary and Issues*, by Shawn Reese.

¹⁹⁸ For more information and recommendations on shifting DHS’s mission towards nonmilitary threats, see Thomas

Congress may consider assessing whether it is efficient and effective to have two separate agencies administering preparedness grants, and the impact of this approach on capability development and coordination.

Validating National Readiness: Exercises

FEMA recommends using simulated disaster scenarios, known as exercises, to validate preparedness and test emergency plans, equipment, and training. Every two years, FEMA conducts a National Level Exercise (NLE) to gauge readiness for catastrophic events and evaluate the nation's progress towards the National Preparedness Goal. These exercises have multiple components, and generally culminate in a large, full-scale exercise with thousands of participants from multiple federal agencies, state, local, tribal, and territorial (SLTT) governments, industry partners, and nongovernmental organizations.

FEMA has never led an NLE that has focused on a pandemic scenario, although in the early 2000s, some of its "Top Officials" (TOPOFF) exercises explored national coordination for response to certain types of public health emergencies, such as chemical or biological weapons attacks.¹⁹⁹ FEMA is also not the only agency conducting nationally scoped preparedness exercises with broad stakeholder participation. For instance, the Department of Health and Human Services' Office of the Assistant Secretary for Preparedness and Response (ASPR) also conducts major exercises involving multiple federal agencies, SLTT partners, private industry, and nongovernmental participants. Some of these intergovernmental exercises have addressed pandemic scenarios.²⁰⁰ Other departments and agencies that coordinate exercises are not required to coordinate with the NLE, and their results and recommendations may not be integrated with those from NLEs. Congress might consider mandates for better interagency coordination of nationally scoped exercises as well as a more unified strategy for tracking outcomes. Congress may also conduct oversight activities or mandate reporting on the results of these preparedness-building activities.

According to guidance published by FEMA, every exercise should yield lessons learned, corrective actions, and an improvement plan for the participating stakeholders. These documents provide a roadmap for closing gaps in core prevention, protection, response, recovery, and mitigation capabilities. GAO has stated that FEMA lacks a formal mechanism to document and track best practices, lessons learned, and corrective actions identified through after-action reports (AARs), and lacks guidance on sharing AAR findings with stakeholders.²⁰¹ The outputs and benefits of NLEs, and other exercises may be lost without greater accountability for recording and implementing the results. GAO recommended that DHS develop a better means of tracking exercise outputs, and DHS officials concurred and planned to address them before March 31, 2022.²⁰² Congress may consider oversight activities to ensure that the findings of NLEs are properly leveraged to improve national capabilities.

Warrick and Caitlin Durkovich, "Future of DHS Project: Key Findings and Recommendations," *Atlantic Council*, August 2020, <https://www.atlanticcouncil.org/content-series/future-of-dhs/future-of-dhs-project-key-findings-and-recommendations/>.

¹⁹⁹ For more information on National Level Exercises, see CRS In Focus IF11879, *National Level Exercises: History, Authorities, and Congressional Considerations*, by Lauren R. Stienstra.

²⁰⁰ See, for example, the pandemic exercise conducted in 2019 and detailed in Office of the Assistant Secretary for Preparedness and Response, *Crimson Contagion 2019 Functional Exercise After-Action Report*, January 2020.

²⁰¹ GAO, *National Preparedness*, pp. 36-37.

²⁰² GAO, *National Preparedness*.

Additionally, while FEMA administers NLEs on behalf of the federal government as a whole, it does not select the focus of these exercises directly. The design and development of NLEs is guided by the strategic priorities set by the Principals Committee of the National Security Council and builds on real-world incidents.²⁰³ Should Congress desire to shift the focus, frequency, or scope of NLEs, it may consider more prescriptive legislative language or rulemaking.

Pandemic Response and the Limits of FEMA's Capacity and Expertise

The FEMA Administrators who have led the agency during the nation's response to the COVID-19 pandemic (Peter Gaynor, under President Trump; Bob Fenton (Acting) and Deanne Criswell, under President Biden) have acknowledged the challenges posed by the agency's simultaneous response to the pandemic and other concurrent disasters. They have noted that the magnitude and nature of the incident necessitated a re-examination of its practices, and emphasized the need to reduce the risk to staff while still enabling FEMA to perform its mission.²⁰⁴ To support pandemic response, they have focused on expanding FEMA's workforce,²⁰⁵ and supporting state, local, tribal, and territorial response partners ("response works the best when it's locally executed, state-managed, and federally supported").²⁰⁶ Additionally, they have acknowledged that Congress provided FEMA and the DRF with sufficient financial resources to perform its mission.²⁰⁷

Although the Administrators lauded the work of FEMA in managing the whole-of-government response to the COVID-19 pandemic, GAO determined that the pandemic overwhelmed existing preparedness and response structures and resources at the agency.²⁰⁸ Further, in 2020, GAO reported on FEMA's staffing shortages and workforce challenges, noting "[t]he large number of declared COVID-19 disasters coupled with hurricane and wildfire seasons adds other potential challenges."²⁰⁹ Challenges identified by GAO related to FEMA's support of the pandemic

²⁰³ The priorities for 2021-2022 include continuity of essential functions; cybersecurity; economic recovery and resilience; national security emergencies and catastrophic incidents; operational coordination; public health and healthcare emergencies; shelter and housing solutions; and stabilization and restoration of community lifelines.

²⁰⁴ U.S. Congress, House Committee on Oversight and Reform, Subcommittee on Environment, *FEMA's Natural Disaster Preparedness and Response Efforts During the Coronavirus Pandemic*, Statement of Peter Gaynor, then-Administrator, FEMA, DHS, 116th Cong., 2nd sess., July 24, 2020, no. 116-107, p. 5 (hereinafter Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*). See also FEMA, *Initial Assessment*, pp. 110, 112; U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *FEMA's Priorities for FY 2022 and Beyond: Coordinating Mission, Vision, and Budget*, Statement of Deanne Criswell, FEMA Administrator, 117th Cong., 1st sess., June 23, 2021, p. 2, <https://transportation.house.gov/imo/media/doc/Criswell%20Testimony1.pdf> (hereinafter Statement by Administrator Criswell, *FEMA's Priorities for FY2022 and Beyond*).

²⁰⁵ Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*, p. 6; Statement by Administrator Criswell, *FEMA's Priorities for FY2022 and Beyond*, p. 3.

²⁰⁶ Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*, pp. 16-17; see also Statement of Robert Fenton, then-Senior Official Performing the Duties of the Administrator, FEMA, DHS, in U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *The Role of FEMA and Emergency Management in COVID-19 Response*, 117th Cong., 1st sess., Mar. 16, 2021, <https://www.fema.gov/fact-sheet/role-fema-and-emergency-management-covid-19-response> (hereinafter Statement of Robert Fenton, *The Role of FEMA in COVID-19 Response*).

²⁰⁷ Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*, p. 17.

²⁰⁸ Statement of Chris Currie, Director, Homeland Security and Justice, GAO, in House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*; see also GAO, *FEMA Disaster Workforce: Actions Needed to Address Deployment and Staff Development Challenges*, GAO-20-360, May 4, 2020, <https://www.gao.gov/products/gao-20-360>.

²⁰⁹ Statement by Chris Currie, Director, Homeland Security and Justice, GAO, in House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*, pp. 26, 32-33.

response include workforce-related challenges, such as staffing shortages; unreliable/incomplete staffing information from the qualification and deployment process, contributing to an ineffective use of the deployed workforce; the need for contract management improvements;²¹⁰ and a dearth of pandemic disaster management experience.²¹¹

Operational Capacity

Sufficient staffing is critical to FEMA's ability to support its partners during disasters. The President's pandemic declarations required FEMA to support response efforts in every state and territory, as well as the District of Columbia and several tribes, while also supporting the ongoing response to natural disasters, such as hurricanes and wildfires.

FEMA has dedicated significant numbers of staff to the COVID-19 pandemic response. Prior to standing up the NRCC to manage federal interagency COVID-19 coordination efforts, FEMA was already "supporting 43 concurrent, open disaster declarations with over 5,000 personnel deployed."²¹² As of July 22, 2020, "FEMA ha[d] 2,245 employees supporting COVID-19 pandemic response out of a total of 20,831 agency employees ready to respond to any other potential emergencies ... [and] FEMA [was] responding to 114 active disasters and 97 emergency declarations concurrently."²¹³ As of March 12, 2021, a year after President Trump declared a nationwide emergency for the COVID-19 pandemic, "FEMA ... deployed 1,842 staff across the nation to support vaccination missions."²¹⁴ In addition to deploying to support disaster response activities, FEMA's staff also have steady-state responsibilities associated with their "day jobs," and the increasing number of Stafford Act declarations and nationwide events like the COVID-19 pandemic "will continue to put unsustainable pressure on FEMA personnel."²¹⁵

Some members of FEMA's workforce that contribute to day-to-day operations and long-term projects may be deployed at length for incidents like the COVID-19 pandemic. GAO explains that a FEMA "staff member who works day-to-day in FEMA's Office of Policy and Program Analysis could hold a primary incident management title as a Facilities Manager in FEMA's Logistics cadre and a subordinate title of Logistics Specialist in the same cadre, and may be certified to operate certain types of forklifts" for response purposes.²¹⁶ Some may worry that the deployment of staff in this way could diminish the agency's capacity to advance its day-to-day mission.²¹⁷

²¹⁰ See, for example, GAO, *2017 Disaster Contracting: Actions Needed to Improve the Use of Post-Disaster Contracts to Support Response and Recovery*, GAO-19-281, April 2019, <https://www.gao.gov/assets/gao-19-281.pdf>.

²¹¹ Statement by Chris Currie, Director, Homeland Security and Justice, GAO, in House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*, pp. 32-33.

²¹² FEMA, *Initial Assessment Report*, p. 11.

²¹³ U.S. Congress, House Committee on Oversight and Reform, Subcommittee on Environment, *FEMA's Natural Disaster Preparedness and Response Efforts During the Coronavirus Pandemic*, 116th Cong., 2nd sess., July 24, 2020, no. 116-107, p. 4.

²¹⁴ Statement of Robert Fenton, *The Role of FEMA in COVID-19 Response*.

²¹⁵ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Preparedness for COVID-19: The Initial Pandemic Response and Lessons Learned*, Statement of RADM Joseph L. Nimmich (USCG, ret.), 117th Cong., 1st sess., Apr. 14, 2021, p. 3 (hereinafter Statement of RADM Joseph L. Nimmich, *Preparedness for COVID-19*).

²¹⁶ GAO, *FEMA Disaster Workforce: Actions Needed to Address Deployment and Staff Development Challenges*, GAO-20-360, May 2020, p. 13.

²¹⁷ See, for example, the testimony of GAO representative Chris Currie and former FEMA Administrator Craig Fugate in U.S. Congress, House Homeland Security Subcommittees on Emergency Preparedness, Response, and Recovery and

To enhance the agency's capacity, then-FEMA Administrator Peter Gaynor noted that, since the beginning of FY2020, FEMA on-boarded more than 2,300 disaster personnel (more than a 22% increase over FY2019).²¹⁸ Additionally, in her statement before the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, Administrator Deanne Criswell stated that FEMA is prioritizing its workforce's health and safety, and noted FEMA is evaluating how to enhance operational capacity as they prepare for a post-COVID-19 environment.²¹⁹ Administrator Criswell also emphasized the need to have the right staffing levels to ensure workforce readiness, as well as appropriate training, tools, and resources.²²⁰

Still, FEMA reported that capacity constrained the agency's posture towards the pandemic. Despite the efforts discussed above, in June 2020, FEMA cited the need to adequately prepare for hurricane and fire seasons as one reason it was reducing engagement in certain pandemic response efforts (some of which transitioned to DOD and HHS in late spring through fall 2020).²²¹ Further, FEMA's January 2021 self-assessment noted that the agency was unprepared to staff the NRCC for an incident of such scale and duration as the pandemic.²²² Federal personnel across the government that FEMA deploys to supplement SLTT capacity also appeared near exhaustion during the healthcare worker shortage in fall 2021. FEMA instructed SLTTs seeking supplemental federal personnel to first exhaust other means to build capacity, including decompressing hospitals and recalling retirees, before requesting federal assistance given "the possible scarcity of medical personnel resources."²²³ A recent survey of federal civil servants suggests that capacity constraints across agencies may have hindered the pandemic response.²²⁴

The ongoing COVID-19 pandemic and the disaster seasons (notably, floods, fires, and hurricanes), and the potential for novel and emerging threats and hazards may continue to affect FEMA's workforce and future staffing needs.²²⁵ FEMA and Congress continually evaluate the

Oversight, Management, and Accountability, *FEMA: Building A Workforce Prepared And Ready To Respond*, hearing, 117th Cong., 1st sess., Jan. 20, 2022.

²¹⁸ Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*, p. 6.

²¹⁹ Statement by Administrator Criswell, *FEMA's Priorities for FY2022 and Beyond*, p. 2.

²²⁰ *Ibid.*, p. 3.

²²¹ Statement of then-FEMA Administrator Peter Gaynor and Rear Admiral John Polowczyk, in HSGAC, *Federal Procurement and Distribution*.

²²² FEMA, *Initial Assessment Report*, pp. 12, 122.

²²³ FEMA, "Medical Staffing Requests Advisory," Aug. 18, 2021, <https://www.fema.gov/fact-sheet/medical-staffing-requests-advisory>.

²²⁴ David Lewis, "Is the Failed Pandemic Response a Symptom of a Diseased Administrative State?" *Daedalus*, vol. 150, no. 3, Summer 2021, pp. 68-88; "Partnership for Public Service Releases Preliminary Federal Executive Survey Data, Announces New Initiative to Renew the Federal Government," *Partnership for Public Service*, Oct. 14, 2020, <https://ourpublicservice.org/wp-content/uploads/2020/10/Partnership-Survey-Reform-Release-2.pdf>.

²²⁵ Statement of Elizabeth Zimmerman, Former Associate Administrator, FEMA Office of Response and Recovery, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Preparedness for COVID-19: The Initial Pandemic Response and Lessons Learned*, 117th Cong., 1st sess., Apr. 14, 2021, p. 8 (hereinafter Statement of Elizabeth Zimmerman, *Preparedness for COVID-19*).

agency's funding and staffing needs,²²⁶ and Congress could also consider evaluating the need for building staffing surge capacity to further support disaster response.²²⁷

Infectious Diseases Incident Experience/Expertise

As noted by GAO, “the response to the COVID-19 pandemic has relied on both public health and emergency management capabilities, which are often governed by different authorities and directed by different agencies at the Federal and non-Federal level.”²²⁸ HHS is the lead federal agency for Emergency Support Function #8—Public Health and Medical Services, and has statutory authority for health and medical events.²²⁹ Despite this, as described above, FEMA was placed in charge of the federal response to the COVID-19 pandemic. In an earlier hearing, former FEMA Administrator Craig Fugate noted that FEMA is

the ultimate support agency.... By putting FEMA in the lead role, I think we lost a lot of the expertise that CDC should have had that FEMA could have supported. So I think FEMA's role as the Nation's crisis manager should be enforced, but I think it should also be seen that we want to make sure that the lead agencies with the jurisdiction, the legal authority, and the expertise are taking that lead and FEMA is supporting it and hopefully making them more successful.²³⁰

Emergency managers commonly support overall incident coordination, and work with the lead agencies that possess the subject matter expertise needed to manage the incident response efforts. According to GAO, during previous health-related incidents in the United States, such as H1N1, Ebola, and Zika, HHS and the CDC possessed the capacity to handle the public health response. The COVID-19 pandemic, however, has been different, in part, because of the resource coordination and logistical challenges it has presented.²³¹

Congress might examine FEMA's ongoing role in the pandemic to determine whether possible future roles in public health incidents require the agency to develop new areas of expertise in its leadership and workforce. For example, policy scholars have suggested incorporating healthcare experts into FEMA's leadership.²³² Additional funds may be needed for general or targeted hiring

²²⁶ FEMA includes funding for staffing in its annual budget requests to Congress. See U.S. Department of Homeland Security, *FY 2022 Budget in Brief*, p. 64-67, https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf; see also DHS, *Federal Emergency Management Agency Budget Overview: Fiscal Year 2022 Congressional Justification*, May 25, 2021, https://www.dhs.gov/sites/default/files/publications/federal_emergency_management_agency_0.pdf.

²²⁷ Statement of RADM Joseph L. Nimmich, *Preparedness for COVID-19*, p. 4. RADM Nimmich cited the Business Executives for National Security's (BENS's) recommendation to maximize surge and supply capabilities, included in their report, *Findings and Recommendations of the BENS Commission on the National Response Enterprise: A Call to Action*, pp. 14-16, <https://www.bens.org/file/national-response-enterprise/CNRE-Report-February-2021.pdf>.

²²⁸ Statement by Chris Currie, Director, Homeland Security and Justice, GAO, in HSGAC, *Reviewing Federal and State Pandemic Supply Preparedness and Response*, pp. 34-35.

²²⁹ FEMA, “Emergency Support Function #8—Public Health and Medical Services Annex,” June 2016, https://www.fema.gov/sites/default/files/2020-07/fema_ESF_8_Public-Health-Medical.pdf; FEMA, *Initial Assessment Report*, pp. 22-23; see also Statement of Elizabeth Zimmerman, *Preparedness for COVID-19*, p. 3.

²³⁰ House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*, p. 39. See comments by Craig Fugate, Senior Advisor, Blue Dot Strategies and Former FEMA Administrator, and Mark Ghilarducci, Director of the California Office of Emergency Services, who concurred with Mr. Fugate's comments.

²³¹ Chris Currie, Director, Homeland Security and Justice, GAO, in House Homeland Security Committee, *Federal and State Pandemic Supply Preparedness and Response*, pp. 39-40.

²³² Attila Hertelendy and William Waugh, “Emergency Management Missing from the Pandemic?” *Journal of Emergency Management*, vol. 18, no. 7 (2020), pp. 149-150; Dale A. Rose et al., “The Evolution of Public Health Emergency Management as a Field of Practice,” *American Journal of Public Health*, vol. 107 (September 2017), pp.

to ensure FEMA has sufficient and appropriately trained staff to accomplish pandemic-related tasks and activities. Additional staff may help to meet the agency's evolving needs; for example, providing vaccination support.

Adapting FEMA's Regionalized Response Structure to a Nationwide Disaster

To respond to the pandemic, FEMA undertook operations missions that were unprecedented in kind and scale for the agency. While much of FEMA's response efforts adhered to the principles described in the National Incident Management Strategy (NIMS), Incident Command System (ICS) and Federal Interagency Response and Recovery Plans (FIOPs), the agency also adapted certain response procedures to meet the novel demands of an infectious disease incident.

The historic, nationwide, and unique demands of the pandemic conflicted with some aspects of FEMA's operational plans, tools, and locally-focused strategies. For example, conflicts with DHS NIMS/ICS mechanisms and HHS-established task forces delayed the creation of a unified information collection and situational awareness plan for the pandemic by several months.²³³ Additionally, FEMA executed an unprecedented number of mission assignments (work orders through which FEMA tasks federal personnel and agencies to execute response work, e.g., construction of temporary care facilities) that required federal personnel to support response in HQ and different regions and states. This surge required FEMA to modify mission assignment procedures previously designed for localized response—by creating “national activation mission assignments”—to reduce complexity and save time.²³⁴

At times, the NRCC also shared or assumed responsibility for certain efforts typically coordinated at the regional level—including donations management, ongoing resource request assessment and fulfillment, and logistics. FEMA's system of collecting and tracking resource requests from state and local governments required modification during response efforts due to Applicants' lack of familiarity with the system and the number and complexity of requests.²³⁵ FEMA's logistics supply chain management tool tracks resources and requests, but the agency was unable to integrate information from other federal agencies and private sector and NGO partners.²³⁶ FEMA reported that nonfederal partners were frustrated with national response strategies that differed from previous, conventional FEMA responses that are more localized and led by FEMA Regional leadership.²³⁷

Congress may be interested in monitoring what, if any, modifications to FEMA's response processes and frameworks are retained. The benefits and drawbacks of these changes may shed light on how FEMA—or the federal government more broadly—prepares for future infectious disease or other geographically dispersed incidents, given shared response responsibilities across all levels of government. Among the factors Congress may choose to review is the fact that the NHSC called for the government to revisit NIMS/ICS concepts and endorsed the creation of a national strategy, “top-down guidance from the federal government,” and the “use of a single official federal voice” for such guidance to ensure coherence across regions, agencies, and levels

126-133.

²³³ FEMA, *Initial Assessment Report*, pp. 103-104.

²³⁴ *Ibid.*, pp. 48, 57-59.

²³⁵ *Ibid.*, pp. 48-50.

²³⁶ *Ibid.*, p. 55.

²³⁷ *Ibid.*, p. 80.

of government.²³⁸ Other policy experts noted that increased subnational coordination beyond federal intervention might mitigate the “fragmented and decentralized” nature of phases of the U.S. pandemic response.²³⁹

FEMA-Led Critical Supply Distribution

Following FEMA’s assumption of leadership of the federal pandemic response, responsibility for supporting and informing decisions about the allocation, distribution, and procurement of pandemic-related supplies shifted to the Supply Chain Task Force. Representatives from FEMA and DOD jointly led the Supply Chain Task Force.

At the height of the agency’s distribution efforts from March 2020 through July 2020, FEMA exercised its authority to provide direct federal assistance to distribute PPE, ventilators, testing supplies, and oxygen to PA Recipients (e.g., states, tribes, and territories with Stafford declarations), who could then distribute them to Applicants, including nonprofit healthcare providers. However, FEMA and the Unified Coordination Group (UCG) confronted several challenges, including PPE supplies insufficient to meet the demands of governments and providers nationwide. As a result, decision-making bodies, including the UCG, undertook PPE allocation decisions using, in part, a new Resource Allocation Tool. FEMA’s testing supply distribution followed different procedures guided by the Trump Administration’s *Testing Blueprint*.²⁴⁰

To inform PPE allocation decisions, the UCG relied upon real-time contract data provided by the country’s largest medical supply distributors, pursuant to agreements established for Project Air Bridge participants.²⁴¹ This data afforded FEMA and the UCG visibility into the domestic PPE supply chain.²⁴² The Supply Chain Task Force consolidated these data with other medical, supply, and demographic data obtained through private sector and government partners to support allocation decisions.²⁴³

In the early months of FEMA’s distribution efforts, many stakeholders expressed confusion over shifting responsibility for supply procurement and the federal government’s PPE allocation determinations. FEMA acknowledged that the “UCG scrutinized requests for supplies,” because subfederal officials “overestimated their needs.”²⁴⁴

²³⁸ NHSC, *Pandemic After-Action Report*, pp. 8-9.

²³⁹ David Carter and Peter May, “Making Sense of the U.S. COVID-19 Pandemic Response: A Policy Regime Perspective,” *Administrative Theory and Praxis*, May 5, 2020, pp. 265-277.

²⁴⁰ GAO, *Federal Efforts*, p. 12; CRS Report R46481, *COVID-19 Testing: Frequently Asked Questions*, coordinated by Amanda K. Sarata and Elayne J. Heisler, pp. 15-17; FEMA, “Federal Support to Expand National Testing Capabilities,” May 5, 2020, pp. 15-17, <https://www.fema.gov/fact-sheet/federal-support-expand-national-testing-capabilities>; HHS, “Report to Congress: COVID-19 Strategic Testing Plan,” May 24, 2020, pp. 20-21, <https://www.democrats.senate.gov/imo/media/doc/COVID%20National%20Diagnostics%20Strategy%2005%2024%202020%20v%20FINAL.pdf>.

²⁴¹ FEMA, *Initial Assessment Report*, pp. 64-68.

²⁴² *Ibid.*, p. 68.

²⁴³ The Supply Chain Task Force’s data and analysis body, the National Resource Prioritization Cell, supported allocation decisions and procedures. See FEMA, “Coronavirus (COVID-19) Pandemic: National Resource Prioritization Cell,” Apr. 18, 2020. For more information, see CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire, pp. 12-17; FEMA, *Initial Assessment Report*, pp. 8-9, 35-36, 68.

²⁴⁴ FEMA, *Initial Assessment Report*, p. 36; GAO, *COVID-19: Opportunities*, p. 22.

In September 2020, GAO found that seven of eight states interviewed about PPE supplies found that the situation had improved since the onset of the pandemic.²⁴⁵ However, GAO issued multiple recommendations related to federal medical supply distribution. In particular, it recommended that FEMA and HHS communicate to subfederal governments how the federal government planned to help mitigate medical supply needs and enhance those governments' ability to track supply requests.²⁴⁶ When reviewing the status of these recommendations in September 2021, GAO cautioned that “[w]ithout systematic and deliberate action to help jurisdictions ensure they have the support they need to track, manage, and plan for supplies, states, tribes, and territories on the front lines of the whole-of-nation COVID-19 response may continue to face challenges that hamper their effectiveness.”²⁴⁷

Members of Congress have repeatedly raised concerns over distribution procedures given the lack of publicly available information on the factors and methodology used to determine supply distribution.²⁴⁸ Given these issues, Congress may wish to consider legislation or directed rulemaking that promotes greater transparency in FEMA's supply allocation procedures, particularly when the agency is confronting supply scarcity.²⁴⁹ FEMA has acknowledged that the pandemic supply issues presented new challenges to the agency.²⁵⁰ Historically, the agency's logistics and distribution challenges focused on transporting resources into disaster-stricken areas.²⁵¹ Congress may determine that FEMA should share with Congress, experts, or the public the data, algorithms, and decision-making methodologies it uses for supply allocation if FEMA is to coordinate national or multi-region supply distribution needs in future hazards. Of note, HHS's recent *National Strategy for a Resilient Public Health Supply Chain* includes several objectives focused on increasing transparency and coordination with subfederal partners.²⁵²

²⁴⁵ GAO, *Federal Efforts*, p. 13. The GAO conducted interviews in July and August 2020 with officials from California, Colorado, Idaho, Massachusetts, Nebraska, New Jersey, New Mexico, and South Carolina. GAO, *Federal Efforts*, p. 141.

²⁴⁶ GAO, *COVID-19: Opportunities*, p. 1.

²⁴⁷ GAO, “Recommendations from COVID-Related Reports as of Sept. 30, 2021,” Recommendation Status Comment as of Sept. 30, 2021, Recommendation 03, GAO-20-701, <https://www.gao.gov/coronavirus>.

²⁴⁸ See, for example, Sens. Warren, Blumenthal, and Schumer, Letter to Pandemic Response Accountability Committee Chair Michael Horowitz, June 8, 2020, <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20PRAC%20re%20project%20airbridge%202020.06.pdf>; and Sen. Lankford and Sen. Johnson, public statements in HSGAC, *Federal Procurement and Distribution*; Testimony of Rep. Katko, House Homeland Security Committee, *Confronting the Pandemic*.

²⁴⁹ For more detail, see CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire, pp. 15-17, 43-44. For more on stockpile and distribution transparency, see Preeti Mehrotra, Preeti Malani, and Prashant Yadav, “Personal Protective Equipment Shortages During COVID-19—Supply Chain-Related Causes and Mitigation Strategies,” *JAMA Health Forum*, May 12, 2020, <https://jamanetwork.com/channels/health-forum/fullarticle/2766118>; Anita Patel et al., “Personal Protective Equipment Supply Chain: Lessons Learned from Recent Public Health Emergency Responses,” *Health Security*, vol. 15, no. 2 (June 2017), pp. 244-252.

²⁵⁰ FEMA, *Initial Assessment Report*, p. 71.

²⁵¹ *Ibid.*, p. 54; Statement by Administrator Gaynor, *FEMA's Natural Disaster Response During COVID-19*.

²⁵² HHS, *National Strategy for a Resilient Public Health Supply Chain*, July 2021, pp. 38-39, <https://www.phe.gov/Preparedness/legal/Documents/National-Strategy-for-Resilient-Public-Health-Supply-Chain.pdf>.

Equity and FEMA's Pandemic Response

Many Members of Congress, policy experts, and scholars have underscored the importance of equitable²⁵³ access to federal disaster assistance during the pandemic, particularly for underserved populations.²⁵⁴

Concerns over access to FEMA assistance for underserved populations, including low-income individuals, individuals with disabilities, tribal communities, communities of color, and rural communities grew as the government observed some vulnerable populations suffering disproportionate hospitalizations and deaths attributed to COVID-19.²⁵⁵ For example, in June 2020, nine Senators wrote to then-FEMA Administrator Gaynor expressing concern over “administrative hurdles” including prerequisites to receiving PA and the reimbursement-based delivery model that inhibited or slowed the delivery of assistance to tribal communities that suffered disproportionately from the pandemic.²⁵⁶ Subsequently, following reports that racial and ethnic minority groups may have been underrepresented in the population that received vaccines during the first month of the COVID-19 vaccination program, some Members suggested FEMA ensure vaccination assistance reached these communities.²⁵⁷ More recently, both FEMA and GAO found that tribal governments faced particular challenges accessing Stafford Act assistance during the pandemic. GAO additionally found that FEMA did not have the capacity to extend needed technical assistance to these communities.²⁵⁸

²⁵³ FEMA defines equity as “[t]he consistent and systematic fair, just and impartial treatment of all individuals.” FEMA, “FEMA Defines Equity in Its Mission of Making Programs More Accessible,” Sept. 9, 2021, <https://www.fema.gov/press-release/20210909/fema-defines-equity-its-mission-making-programs-more-accessible>.

²⁵⁴ See, for example, Testimony of Ranking Member Peters, in HSGAC, *Federal Procurement and Distribution*; Testimony of Chairman Bennie Thompson, U.S. Congress, House Committee on Homeland Security, *Ensuring Equity in Disaster Preparedness, Response, And Recovery*, hearing, 117th Cong., 1st sess., Oct. 27, 2021; Testimony of Rep. Johnson, House T&I, *Federal Response Efforts*. This report uses the term “underserved populations” to reflect FEMA’s definition: “Groups that have limited or no access to resources or that are otherwise disenfranchised. These groups may include people who are socioeconomically disadvantaged; people with limited English proficiency; geographically isolated or educationally disenfranchised people; people of color as well as those of ethnic and national origin minorities; women and children; individuals with disabilities and others with access and functional needs; and seniors.” FEMA, “Underserved Populations,” FEMA Glossary, <https://www.fema.gov/about/glossary/u>.

²⁵⁵ See, for example, Centers for Disease Control and Prevention, “COVID-19 Among American Indian and Alaska Native Persons—23 States, January 31–July 3, 2020,” *Morbidity and Mortality Weekly Report*, Aug. 19, 2020, https://www.cdc.gov/mmwr/volumes/69/wr/mm6934e1.htm?s_cid=mm6934e1_w; GAO, *COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year*, GAO-21-387, Mar. 31, 2021, pp. 356-366 (hereinafter GAO, *COVID-19: Sustained Federal Action*).

²⁵⁶ Senator Krysten Sinema et al., Letter to then-Administrator Peter Gaynor, June 8, 2020, https://www.rosen.senate.gov/sites/default/files/2020-06/2020-06-08%20Udall,%20Sinema%20et.al_%20FEMA%20Tribal%20Response.pdf; see also Testimony of Rep. Xochitl Torres Small, in House Homeland Security Committee, *Federal And State Pandemic Preparedness and Response*; GAO, *COVID-19: Sustained Federal Action*, pp. 25-27.

²⁵⁷ See, for example, testimony from Rep. James E. Clyburn and Rep. Maxine Waters, U.S. Congress, Select Subcommittee on the Coronavirus Crisis, 117th Cong., 1st sess., Feb. 19, 2021, <https://coronavirus.house.gov/subcommittee-activity/briefing/webex-briefing-ensuring-equity-coronavirus-vaccinations>. See also Elizabeth M. Painter, Emily N. Ussery, and Anita Patel, “Demographic Characteristics of Persons Vaccinated During the First Month of the COVID-19 Vaccination Program—United States, December 14, 2020–January 14, 2021,” *Morbidity and Mortality Weekly Report (MMWR)*, vol. 70, no. 5 (Feb. 5, 2021), pp. 174-177; Murial Jean-Jacques and Howard Bauchner, “Vaccine Distribution—Equity Left Behind?” *JAMA Network*, Jan. 29, 2021, <https://jamanetwork.com/journals/jama/fullarticle/2776053>.

²⁵⁸ GAO, *COVID-19: Sustained Federal Action*, pp. 356-366; FEMA, *Initial Assessment Report*, pp. 10, 86-89.

Amid these concerns, FEMA has taken a series of actions to ensure that some underserved populations may access Stafford Act assistance. During the summer of 2020, then-FEMA Administrator Gaynor testified that he had deployed 25 civil rights advisors to the 10 FEMA regions, where they had adjudicated several hundred civil rights concerns.²⁵⁹ In January 2021, FEMA established the Civil Rights Advisory Group (CRAG) specifically to ensure that FEMA assistance for SLTT and nonprofit vaccination programs is delivered without discrimination, as required by the Stafford Act and federal civil rights law.²⁶⁰ According to FEMA, CRAG deployed personnel from several federal agencies to promote equity in different aspects of vaccination programs, including site selection and distribution.²⁶¹ FEMA also released an itemized list of civil rights considerations to inform state, tribal, and territorial planning for vaccination sites and notified all PA recipients of their obligations to comply with federal civil rights law and data collection under the Stafford Act.²⁶² To promote vaccine access, FEMA made PA available to transport remote and other underserved populations to vaccination sites, and to fund transportation to underserved communities for vaccine outreach campaigns.²⁶³ FEMA made available direct and financial assistance for mobile vaccination clinics in order to “meet people where they work, live and socialize,” and make vaccines available to “hard-to-reach areas and targeting specific populations such as high-risk groups, essential workers and rural communities.”²⁶⁴

FEMA has also undertaken efforts to ensure assistance may reach specific groups with known barriers to accessing Stafford Act assistance, such as individuals and families experiencing homelessness, tribal communities, individuals with disabilities, and other underserved populations. For example, beginning in March 2020, FEMA guidance made PA available for non-congregate sheltering (i.e., sheltering that affords privacy, such as hotels and motels) for several groups of eligible individuals, including individuals residing in congregate sheltering (e.g., people experiencing homelessness) that face increased risk of exposure.²⁶⁵ FEMA also continued existing efforts to enhance coordination with members and leaders of some underserved communities

²⁵⁹ Testimony of then-FEMA Administrator Gaynor, HSGAC, *Federal Procurement and Distribution*.

²⁶⁰ Stafford Act Section 308; 42 U.S.C. §5151. See also implementing federal regulations at 44 C.F.R. Part 7—Nondiscrimination in Federally-Assisted Programs; 44 C.F.R. §206.11—Nondiscrimination in disaster assistance; and relevant civil rights law at DHS, “Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964,” 2016. For more information, see CRS Report R46715, *FEMA Assistance for Vaccine Administration and Distribution: In Brief*, by Erica A. Lee and Kavya Sekar.

²⁶¹ Statement of Robert Fenton, *The Role of FEMA in COVID-19 Response*.

²⁶² FEMA, *Community Vaccination Centers Playbook*, Final Version, Apr. 23, 2021, p. 4, https://www.fema.gov/sites/default/files/documents/fema_community-vaccination-centers_playbook_04-23-2021.pdf; FEMA, “Civil Rights Considerations During COVID-19 Vaccine Distribution Efforts,” Advisory, Feb. 11, 2021, https://www.fema.gov/sites/default/files/documents/fema_civil-rights-covid-19_vaccine_checklist_02-11-2021.pdf; FEMA, “Civil Rights Data Collection,” Advisory, Feb. 6, 2020, https://www.fema.gov/sites/default/files/documents/fema_civil-rights-data-collection_advisory_02-06-2021.pdf.

²⁶³ FEMA, “FEMA Funds Community Engagement for COVID-19 Vaccinations,” May 12, 2021, <https://www.fema.gov/fact-sheet/fema-funds-community-engagement-covid-19-vaccinations>.

²⁶⁴ FEMA, “Mobile Vaccination Centers Improve Vaccine Accessibility,” Mar. 16, 2021, <https://www.fema.gov/blog/mobile-vaccination-centers-improve-vaccine-accessibility>.

²⁶⁵ For more information, see FEMA, “Coronavirus (COVID-19) Pandemic: Non-Congregate Sheltering,” Mar. 21, 2020, https://www.fema.gov/sites/default/files/2020-07/fema_covid_noncongregate-sheltering-faq_factsheet.pdf; National Low Income Housing Coalition (NLIHC), *FEMA Non-Congregate Sheltering During the COVID-19 Pandemic: Policy Changes and New Opportunities to Address the Needs of People Experiencing Homelessness*, <https://nlihc.org/sites/default/files/FEMA-Non-Congregate-Sheltering-During-the-COVID-19-Pandemic.pdf>.

through its Tribal Consultation Policy and Office of Disability Integration and Coordination.²⁶⁶ Still, concerns persist that Stafford Act assistance may not be sufficiently accessible to underserved populations.

Members of Congress concerned about disparities in access to Stafford Act pandemic assistance might take note of relevant open GAO recommendations. For instance, GAO recommended that FEMA provide technical assistance to support tribal governments' efforts to request and receive PA for pandemic response.²⁶⁷ Another potential opportunity for Congress is to review FEMA's authority and capacity to enforce federal civil rights statutes and regulations when providing assistance. If found insufficient, Congress might consider the recommendations of experts that FEMA enhance direct and/or technical assistance for communities with fewer resources and less experience navigating complex FEMA grant programs.²⁶⁸

FEMA and the Defense Production Act

The Defense Production Act (DPA) confers upon the President a broad set of authorities to influence domestic industry in the interest of national defense. The authorities can be used across the federal government to shape the domestic industrial base so that, when called upon, it is capable of providing essential materials and goods needed for the national defense, including emergency preparedness. The DPA includes provisions under Title I to prioritize federal contracts and allocate scarce goods, materials, and services; and under Title III, to provide for the expansion of productive capacity. Title VII provides definitions and other supporting provisions.

The Trump and Biden Administrations have employed the DPA to different extents, and in sometimes novel ways, as part of federal pandemic response. The Trump Administration employed the DPA selectively, focusing on individual companies (e.g., General Motors, 3M) or industry sub-sectors (e.g., meat processing).²⁶⁹ Subsequently, the Biden Administration announced that it would invoke DPA authorities broadly, including to expedite vaccine production.²⁷⁰ Additionally, Congress appropriated approximately \$10 billion in the American Rescue Plan Act to support DPA actions that provide additional domestic access to critical medical supplies.²⁷¹ FEMA is the designated lead agency for government-wide DPA planning and coordination.²⁷² FEMA's employment of DPA authorities during the COVID-19 pandemic revealed certain gaps between executive branch policy intent and execution. In particular, the minimal resources allocated to FEMA's DPA operations prior to 2020 may have undermined

²⁶⁶ FEMA, "Tribal Consultations Policy," <https://www.fema.gov/about/tribes/consultations>, and "FEMA Tribal Consultation Policy," FEMA Policy #101-002-02, July 2019, https://www.fema.gov/sites/default/files/2020-04/CLEAN_FP_101-002-2_Tribal_Policy_June_2019_Signed.pdf; FEMA, "Office of Disability Integration and Coordination," <https://www.fema.gov/about/offices/disability>. Note that GAO and FEMA recommended FEMA more fully implement its Tribal Consultation Policy and improve tribal engagement given problems noted in delivery of Stafford Act assistance to tribal communities. See FEMA, *Initial Assessment Report*, pp. 88-89; GAO, *COVID-19: Sustained Federal Action*, pp. 356-366.

²⁶⁷ GAO, *COVID-19: Sustained Federal Action*, p. 356.

²⁶⁸ GAO, *COVID-19: Sustained Federal Action*, pp. 363-365.

²⁶⁹ See CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire.

²⁷⁰ HHS, "Biden Administration Announces Historic Manufacturing Collaboration Between Merck and Johnson & Johnson to Expand Production of COVID-19 Vaccines," March 2, 2021, <https://www.hhs.gov/about/news/2021/03/02/biden-administration-announces-historic-manufacturing-collaboration-between-merck-johnson-johnson-expand-production-covid-19-vaccines.html>.

²⁷¹ CRS Report R46834, *American Rescue Plan Act of 2021 (P.L. 117-2): Public Health, Medical Supply Chain, Health Services, and Related Provisions*, coordinated by Johnathan H. Duff and Kavya Sekar, pp. 19-21.

²⁷² See CRS In Focus IF11767, *The Defense Production Act Committee (DPAC): A Primer*, by Michael H. Cecire.

FEMA's ability to coordinate DPA efforts prior, and in response, to the COVID-19 pandemic. Relatedly, FEMA's leadership of the Defense Production Act Committee (DPAC), an interagency platform created in 2009 to facilitate DPA planning and coordination across the executive branch, may have contributed to certain challenges experienced during the federal pandemic response.

Defense Production Act Coordination Issues

As discussed earlier, some stakeholders expressed confusion over agency roles and responsibilities during the federal pandemic response. Confusion regarding DPA coordination and implementation was particularly evident as leadership authority shifted between FEMA and HHS; with respect to usage of DPA authorities, both agencies displayed deference to DOD's experience utilizing DPA authorities (which is predominantly based on defense industrial base activities). However, shifting the locus of DPA coordination authority conflicted with preexisting guidance on whole-of-government DPA coordination, which designates FEMA as the federal government's DPA coordinator.

According to Executive Order (E.O.) 13603, the Secretary of Homeland Security is to:

- (1) advise the President on issues of national defense resource preparedness and on the use of the authorities and functions delegated by this order; (2) provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance to agencies assigned functions under this order, developed in consultation with such agencies; and (3) report to the President periodically concerning all program activities conducted pursuant to this order.²⁷³

However, in keeping with FEMA's longstanding role, which precedes the creation of DHS,²⁷⁴ the Secretary of Homeland Security delegated DPA authority to the FEMA Administrator.²⁷⁵ In this capacity, the FEMA Administrator is also the chairperson of the multi-agency Defense Production Act Committee (DPAC), which the 2009 DPA reauthorization established to advise the President and coordinate DPA activities across government.²⁷⁶

Staffing

Although FEMA is the nominal DPA coordinator under the structure established by E.O. 13603, its activities and influence in this regard have been more limited, including prior to the COVID-19 pandemic. According to FEMA, its DPA activities are organized under FEMA's DPA Program Division at the Office of Program and Policy Analysis (OPPA), which prior to the pandemic included four full-time staff (a director and three analysts) and contracted support personnel.²⁷⁷ The DPA Program Division director reports to the OPPA Associate Administrator, who reports to the FEMA Administrator.

²⁷³ Executive Order 13603, "National Defense Resources Preparedness," 77 *Federal Register* 16651-16660, Mar. 22, 2012, <https://www.federalregister.gov/documents/2012/03/22/2012-7019/national-defense-resources-preparedness>.

²⁷⁴ See, for example, Executive Order 12919, "National Defense Industrial Resources Preparedness," 59 *Federal Register* 29523-29534, June 7, 1994, <https://www.govinfo.gov/content/pkg/FR-1994-06-07/pdf/FR-1994-06-07.pdf>.

²⁷⁵ The Secretary of Homeland Security delegated this authority to the FEMA Administrator in DHS Delegation 09052 Rev. 00.1, "Delegation of Defense Production Act Authority to the Administrator of the Federal Emergency Management Agency" (Apr. 1, 2020).

²⁷⁶ For more information, see CRS In Focus IF11767, *The Defense Production Act Committee (DPAC): A Primer*, by Michael H. Cecire.

²⁷⁷ Email to CRS from FEMA Legislative Affairs, May 8, 2020.

FEMA reported that its DPA Program Division's modest staffing was insufficient to the enormity of the task presented by the COVID-19 pandemic. "Because of the technical nature of DPA and its importance during a catastrophic event," noted FEMA's initial assessment report of the COVID-19 pandemic response, "a lack of trained, permanent personnel dedicated to supporting that mission represents a major gap."²⁷⁸ In response to the pandemic, FEMA reported that it increased DPA staff to 30 using interagency personnel, many of whom required training.²⁷⁹

Notably, the same report highlighted that interagency augmentation during the COVID-19 pandemic was not a viable substitute for permanent staff trained and experienced in planning for and employing DPA authorities. Prior to the COVID-19 pandemic, the after-action report for an HHS-led interagency pandemic exercise, *Crimson Contagion*, identified deficiencies associated with participants' understanding of DPA authorities, the statute's applicability to pandemic countermeasures, and a structure for employing those authorities.²⁸⁰

According to its own assessment, FEMA was not well equipped to use DPA authorities independently, or to serve as an interagency coordinator for the use of DPA authorities, in reacting to the COVID-19 pandemic. Such broader concerns were echoed in Congress during the pandemic.²⁸¹

The Defense Production Act Committee Composition

Congress proposed the creation of DPAC following DHS and GAO reports citing insufficient agency planning and employment of DPA authorities and a lack of related interagency coordination.²⁸² DPAC was to "advise the President on the effective use of [the DPA]" and "elevate DPA policy discussions to Cabinet-level posts, so that administrations going forward [would] be able to reassess the [DPA's] provisions and applications, and never lose sight of the importance of coordinating."²⁸³

Despite this critical mission, DPAC leadership roles remain to be filled. The 2009 reauthorization directed the President to appoint an executive director, without Senate confirmation and at the rank "of a Deputy Assistant Secretary (or a comparable position)," who is employed and paid by the same federal agency as the DPAC chairperson.²⁸⁴ Initially, the position of chairperson alternated between FEMA (via DHS delegation) and DOD, per a 2010 presidential directive.²⁸⁵

²⁷⁸ Ibid.

²⁷⁹ FEMA, *Initial Assessment Report*, p. 74.

²⁸⁰ Office of the Assistant Secretary for Preparedness and Response, *Crimson Contagion 2019 Functional Exercise After-Action Report*, Jan. 2020.

²⁸¹ Website of Senator Mark Warner, "Warner, Colleagues Urge Trump to Immediately Use DPA to Manufacture PPE, COVID-19 Testing Supplies," May 7, 2020, <https://www.warner.senate.gov/public/index.cfm/2020/5/warner-colleagues-urge-trump-to-immediately-use-dpa-to-manufacture-ppe-covid-19-testing-supplies>.

²⁸² Although the DHS report is cited in the *Congressional Record*, CRS was unable to find the document. The GAO report in question is Government Accountability Office, *Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities*, GAO-08-854, June 2008, <https://www.gao.gov/assets/280/277418.pdf>.

²⁸³ "Defense Production Act Reauthorization of 2009," *Congressional Record*, daily edition, vol. 155, part 131 (Sept. 16, 2009), p. 21790, <https://www.congress.gov/111/crec/2009/09/16/CREC-2009-09-16-pt1-PgS9480.pdf>.

²⁸⁴ Ibid.

²⁸⁵ Executive Office of the President, "Designating the Chairperson of the Defense Production Act Committee," 75 *Federal Register* 32087, May 19, 2010, <https://www.federalregister.gov/documents/2010/06/07/2010-13659/designating-the-chairperson-of-the-defense-production-act-committee>.

Subsequently, E.O. 13603 designated the FEMA Administrator as chairpersonship. Yet, to date, no executive director has been appointed.

Since the reauthorization of the DPA in 2014, the structural composition of the DPAC, as defined by E.O. 13603, remains unchanged. The DPAC submits an annual report to Congress, which includes a high-level survey of Title I activities and typically includes varying detail and analysis of these activities by agency.²⁸⁶ The DPAC's other statutory functions, such as planning and coordinating DPA Title I activities across government, do not appear in the annual report or in other publicly available documents.

The DPAC's limited activity, particularly during the COVID-19 pandemic, suggests that it has not fulfilled its intended purpose to advise upon and coordinate interagency DPA activities. Relatedly, FEMA's role overseeing the activities of the DPAC suggests that the DPAC, like its DPA Program Division more broadly, requires more robust and permanent resources and staffing to be able to fulfill its mission.

Congress may consider several policy options to improve coordination of DPA authorities. First, Congress could amend existing statutory authorities to more clearly define the responsibilities and resources for the DPAC to fulfill its mandate with independent political leadership. Alternatively, the DPAC's functions could be merged with a new central DPA office with sufficient resources and staffing to coordinate interagency DPA coordination and staffing. FEMA could play a lead or support role in any of these policy alternatives. While FEMA currently is the designated lead agency for DPA and the DPAC, FEMA's apparent institutional reticence to play a more proactive role when it comes to fulfilling its DPA and DPAC obligations may suggest that the federal government might better house lead DPA responsibilities elsewhere. On the other hand, FEMA remains the government's designated lead for DPA authorities, and as recently as the end of the Cold War maintained sizeable staff and resources dedicated to the DPA mission.²⁸⁷

FEMA, the Defense Production Act, and Supply Distribution

In the early stages of the pandemic, media reporting,²⁸⁸ as well as congressional statements,²⁸⁹ contributed to a perception that the federal government was utilizing DPA authorities to preempt, redirect, or, in some cases seize PPE and other medical or critical goods en route to SLTT entities. FEMA denied this claim, explaining that "FEMA is not seizing or taking personal protective equipment (PPE) from state or local governments, hospitals or anyone lawfully engaged in acquiring or distributing PPE."²⁹⁰ FEMA also acknowledged that certain DPA actions may be

²⁸⁶ The most recent DPAC reports are DHS and FEMA, "The Defense Production Act Committee Report to Congress: Calendar Year 2020," Sept. 20, 2021, https://www.fema.gov/sites/default/files/documents/fema_DPAC-report-Defense-production-act-committee_2020.pdf; and DHS and FEMA, "The Defense Production Act Committee Report to Congress: Calendar Year 2020," Sept. 17, 2020, https://www.fema.gov/sites/default/files/documents/fema-dpac-report-to-congress_2019.pdf.

²⁸⁷ According to FEMA, at the end of the Cold War, the DPA Program Division "had more than 60 people." FEMA, *Initial Assessment Report*, p. 74.

²⁸⁸ Noam N. Levey, "Hospitals say feds are seizing masks and other coronavirus supplies without a word," *Los Angeles Times*, Apr. 7, 2020, <https://www.latimes.com/politics/story/2020-04-07/hospitals-washington-seize-coronavirussupplies>.

²⁸⁹ Letter from Senator Elizabeth Warren to Peter T. Gaynor, then-FEMA Administrator, Mar. 30, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.30%20Letter%20to%20FEMA%20re%20MA%20PPE%20Needs.pdf>.

²⁹⁰ FEMA, "Coronavirus Rumor Control," <https://www.fema.gov/disaster/coronavirus/rumor-control#supplies-masks-ppe>.

misunderstood as seizures of lawful orders of critical medical supplies.²⁹¹ On April 10, 2020, FEMA, in coordination with Customs and Border Protection (CBP), issued a final rule on the use of DPA to allocate specific scarce medical supplies, per E.O. 13090 and the President's April 3, 2020 memorandum.²⁹² This allocations action was justified in the final rule as a measure to preserve domestic stocks of scarce medical supplies, because at that time the "domestic need for them exceed[e] the supply." The rule allocated these supplies exclusively for domestic use, effectively prohibiting export without FEMA's authorization.²⁹³ Although the Trump Administration described these measures as necessary to "restrict the export of such threatened PPE," it did not release data on the policy's potential effect on domestic supply. Some experts questioned this strategy, noting that domestic bans constrained trade flows and, in aggregate, could exacerbate supply shortages.²⁹⁴

Similarly, under E.O. 13090, the Administration utilized another DPA Title I authority to police price gouging and hoarding of designated scarce materials and resources, including PPE, in part to prevent profiteering and ensure equitable access to scarce supplies. The Department of Justice (DOJ), in coordination with FEMA and other Department of Homeland Security (DHS) component agencies, established and currently leads a COVID-19 Hoarding and Price Gouging Task Force,²⁹⁵ which has engaged in various enforcement and redistribution actions since its formation in March 2020.

Although the Trump Administration and the Biden Administration have publicized certain individual enforcement actions, both Administrations have not released more comprehensive data on the scale of anti-hoarding/price gouging enforcement or its overall effect on the availability of designated scarce goods. As such, the aggregate impact of these actions is unclear.

More broadly, although the FEMA Administrator issued a formal denial,²⁹⁶ some sources allege that the federal government interrupted or delayed legitimate medical shipments early in the pandemic in an effort to combat potential price gouging or hoarding events. These alleged cases of federal PPE interceptions or seizures may have been preemptive actions, where a producer was compelled to prioritize the performance of a federal contract under DPA Title I authorities.²⁹⁷ Similarly, a producer could have mistakenly attributed an action unrelated to the DPA to the

²⁹¹ Ibid.

²⁹² FEMA, "Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use," 85 *Federal Register* 20195, Apr. 10, 2020, <https://www.federalregister.gov/documents/2020/04/10/2020-07659/prioritization-and-allocation-of-certain-scarce-or-threatened-health-and-medical-resources-for-domestic-use>. Title I of the DPA allows the President to *allocate* or control the general distribution of materials, services, and facilities. See CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Heidi M. Peters.

²⁹³ See Ana Swanson, Zolan Kanno-Youngs, and Maggie Haberman, "Trump Seeks to Block 3M Mask Exports and Grab Masks from Its Overseas Customers," *New York Times*, Apr. 3, 2020, <https://www.nytimes.com/2020/04/03/us/politics/coronavirus-trump-3m-masks.html>.

²⁹⁴ Stormy-Annika Mildner et al., "Export Controls and Export Bans over the Course of the Covid-19 Pandemic, World Trade Organization," Apr. 29, 2020, https://www.wto.org/english/tratop_e/covid19_e/bdi_covid19_e.pdf.

²⁹⁵ Department of Justice (DOJ), *Combating Price Gouging and Hoarding*, accessed Aug. 11, 2021, <https://www.justice.gov/coronavirus/combatingpricegouginghoarding/>.

²⁹⁶ David Rasbach, "Feds Seize Coronavirus Test Kit Materials Bound for Bellingham Hospital and Northwest," *Bellingham Herald*, April 2020, <https://www.bellinghamherald.com/news/coronavirus/article241884351.html>; testimony of then-FEMA Administrator Peter Gaynor, U.S. Congress, House Committee on Homeland Security, *Examining the National Response to the Worsening Coronavirus Pandemic*, Part II, hearings, 116th Cong., 2nd sess., July 22, 2020.

²⁹⁷ For more information on authorities under Title I of the DPA, see CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Heidi M. Peters.

statute or FEMA. However, because the DPA statute does not require the government to publicize DPA actions, it is possible that shipments were redirected or seized under allocations authorities.

Congress may consider requiring more systematic, transparent tracking of DPA actions. In a recent report, GAO recommended that the executive branch “provide greater transparency on the use of DPA Title I authorities for COVID purposes” to allow “taxpayers and other interested stakeholders to see where a priority rating was placed on the contract or contract modification for contract purposes.”²⁹⁸ A more transparent reporting of DPA actions could help the federal government to identify and mitigate gaps in the use of DPA authorities while also reducing confusion and controlling rumors. On the other hand, requiring enhanced transparency could sometimes conflict with the use of the DPA for sensitive purposes, including for national security purposes.

COVID-19 Spending Patterns from the Disaster Relief Fund (DRF)

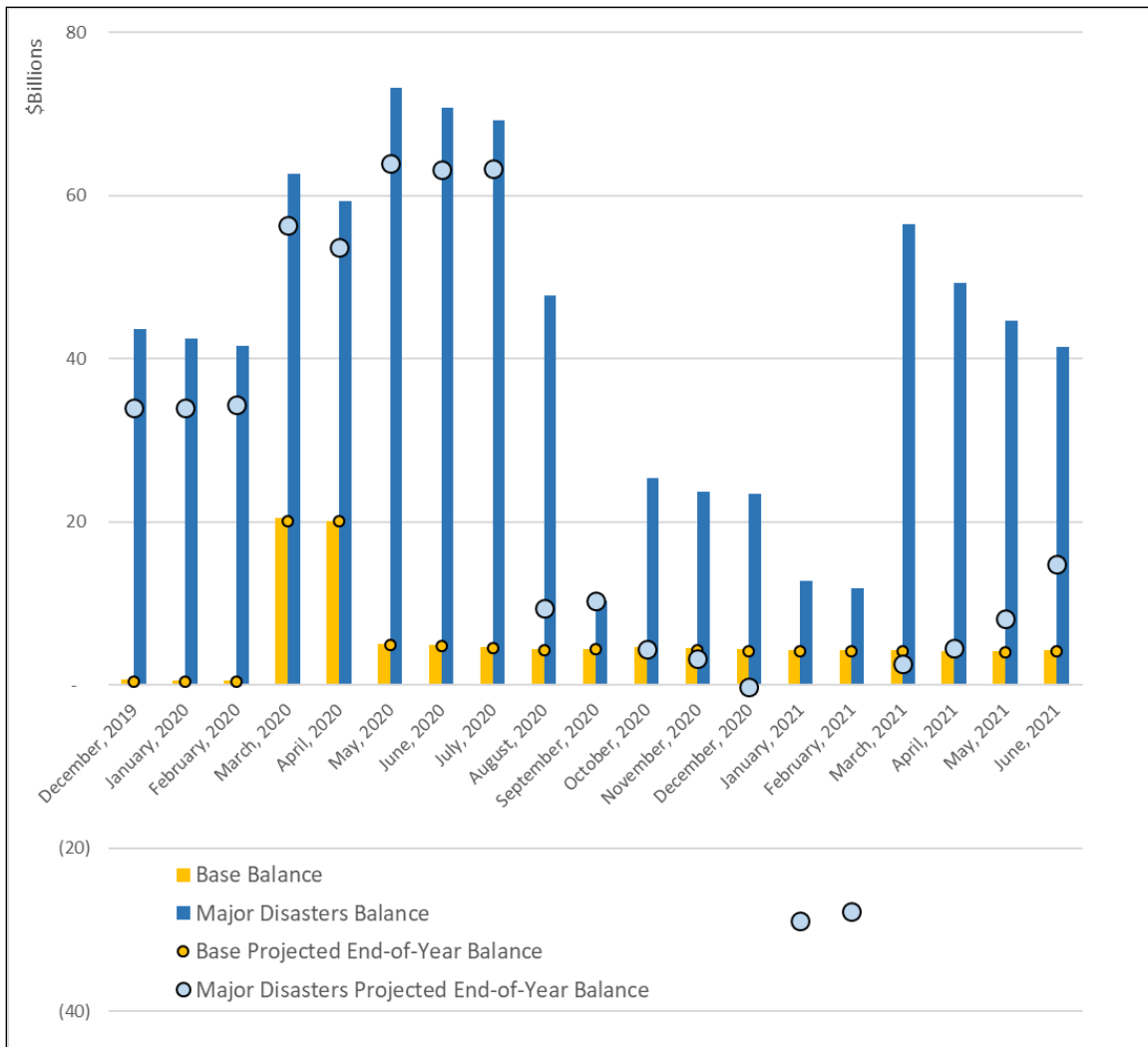
The COVID-19 Pandemic Disaster Declarations and Tapping into the DRF

The federal share of costs of responding to and recovering from Stafford Act-declared emergencies and disasters is generally the Disaster Relief Fund—an appropriations account managed by FEMA for resources provided by Congress for that specific purpose. Unlike most appropriations, these appropriations do not expire after a period of time, meaning they remain available to be used any time after they are provided, and unobligated balances in the DRF are carried over from year to year. At the present time, the DRF appropriation is divided into two categories: resources available for the costs incurred pursuant to major disaster declarations under the Stafford Act, and “the base”—resources available for most other Stafford Act activities, including the costs of responding to emergency declarations.

Figure 6 shows the unobligated balances available in the DRF from December 2019 through June 2021, based on FEMA’s end-of-the-month reports. The bars show the unobligated balances of the major disaster and base categories, and the circles reflect FEMA’s best projections of how much would remain unobligated in the DRF at the end of the fiscal year, as of that month.²⁹⁹

²⁹⁸ GAO, *Defense Production Act: Opportunities Exist to Increase Transparency and Identify Future Actions to Mitigate Medical Supply Chain Issues*, GAO-21-108, November 2020, <https://www.gao.gov/assets/gao-21-108.pdf>.

²⁹⁹ Given the unprecedented nature of FEMA’s involvement in the pandemic response, the estimates did not include COVID-19 pandemic spending until the May 2020 report.

Figure 6. DRF Unobligated Balances and Projections, December 2019-June 2021

Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix A.

Note: At the end of January and February, 2021, the projected end-of-year balance for the DRF was negative.

Figure 6 shows how, at the time of the unprecedented nationwide emergency declarations for the COVID-19 pandemic, the DRF had a significant unobligated balance available. This was due to prior appropriations made, in part, in anticipation of the long-term costs of a series of catastrophic disasters from 2017-2019.³⁰⁰ More than \$41 billion was on hand for the costs of major disaster declarations and roughly \$600 million for other Stafford Act declarations, including the costs of emergency declarations. The emergency declarations issued March 13, 2020, allowed for limited assistance to flow from the DRF, but most of the broader authorities (and resources) available under the Stafford Act were not available until major disaster declarations were requested and approved, starting on March 20, 2020.

In the early weeks of the pandemic, there was uncertainty about how Stafford Act authorities might be interpreted in responding to it. Matters of national public health had not been addressed

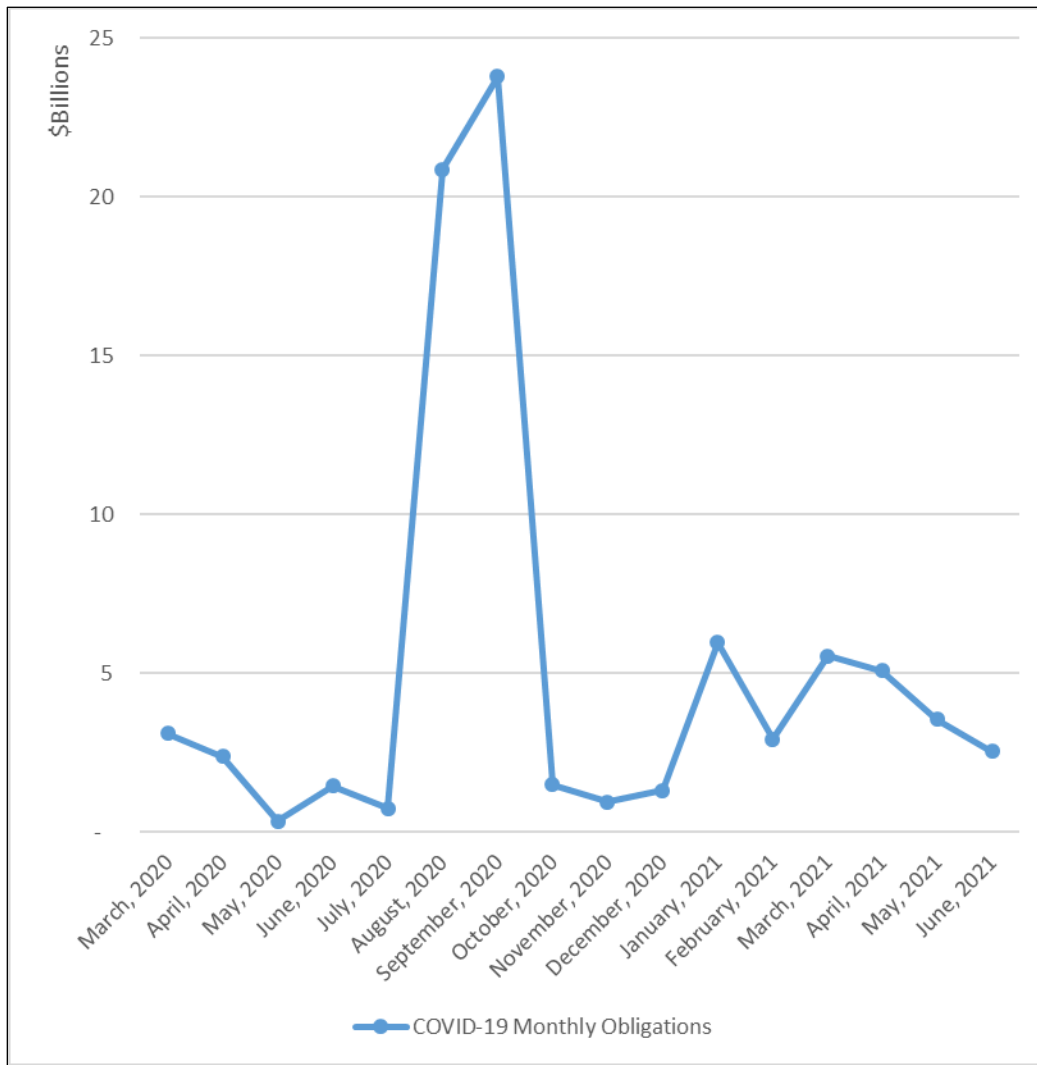
³⁰⁰ For information on historical balances and usage of the DRF, please see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*.

in this fashion, and the modern federalized emergency management system had never before mobilized in response to an incident of this scope and scale.

The novelty of the pandemic response was reflected in the funding provided by Congress in the early weeks of the pandemic. On March 25, 2020, Senate Majority Leader Mitch McConnell unveiled the “Coronavirus Aid, Relief, and Economic Security (CARES) Act,” which included a supplemental appropriations measure with \$45 billion for the DRF in an unprecedented structure: \$25 billion was provided for the costs of major disasters, \$5 billion for the base (which pays the costs of Stafford Act emergencies), and \$15 billion that could be used for either set of purposes. Major disasters and emergencies use different authorities to provide their assistance, so this structure ensured that Stafford Act resources were available to support FEMA’s response, no matter how it was structured. **Figure 6** shows how FEMA originally counted this flexible funding as part of the base. However, after major disaster declarations were issued, the \$15 billion was accounted for as major disaster funding.

Funding began to flow from the DRF in the days following the declarations. **Figure 7** shows the monthly obligations from the DRF from March 2020 through June 2021 for COVID-19 assistance. By the end of the March 2020, over \$3.1 billion had been obligated from the DRF for assistance to 16 states, and by the end of April, that total had risen to \$5.5 billion for assistance to 51 states and territories.³⁰¹ The obligation rate slowed over time, in part due to the evolving understanding of the pandemic and the Administration’s interpretations of the role FEMA should play. The Administration’s approach to the Stafford Act’s authorities may change in a novel situation during the course of an emergency or disaster, which can have a significant impact on outlays from the DRF. Two examples of this, from late summer 2020 and January, 2021, are discussed in the next section.

³⁰¹ FEMA, *Disaster Relief Fund: Monthly Report as of April 30, 2020*, May 7, 2020, pp. 11-12, https://www.fema.gov/sites/default/files/2020-07/disaster-relief-fund-report_5-2020.pdf.

Figure 7. Monthly Obligations for COVID-19 Disaster Declarations

Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix B.

Lost Wages Assistance and Boosting FEMA's Pandemic Involvement

Policy decisions by two different Presidents had a significant impact on the amount of funding provided from the DRF under the Stafford Act major disaster declarations for the COVID-19 pandemic: the Trump Administration's creation of the "Lost Wages" program, and the Biden Administration's expansion of FEMA's response and reduction of state cost share for PA.

Lost Wages Assistance

On August 8, 2020, the Administration announced a "lost wages assistance" program (LWA), which would expand and extend unemployment benefits for several weeks. This initiative would use the Other Needs Assistance (ONA) program under the Individual Assistance (IA) programs

under the Stafford Act.³⁰² More than \$41 billion was obligated for this program—visible in the spike in obligations shown in **Figure 7** in August and September 2020.³⁰³

According to FEMA, the LWA program provided \$42.85 billion in grants—this was more than all non-COVID obligations from the entire IA program under the Stafford Act since FY2000 through FY2020 (\$39.19 billion). The LWA provided more than six times the amount previously obligated under ONA since its inception on April 30, 2002 (\$6.77 billion).

The decision to proceed with the LWA resulted in a significant shift in the way the resources from the DRF were applied across Stafford Act programs. **Table 2** shows the distribution of funds across the program types, looking at non-COVID disasters from FY2011-FY2020, and the COVID-19 declarations.

Table 2. Major Disaster Program Obligation Ratios

Other Disasters vs. COVID-19 Pandemic

	All Major Disaster Declarations, FY2011-FY2020, Non-COVID		COVID-19 Declaration	
	Obligations	%	Obligations	%
Individual Assistance	\$15.1 billion	12.71	\$43.4 billion	52.96
Public Assistance	71.2 billion	59.92	29.5 billion	35.92
Mitigation	6.9 billion	5.81	0.0 billion	0.00
Operations	7.6 billion	6.40	8.3 billion	10.07
Administration	18.0 billion	15.16	0.9 billion	1.06

Source: CRS analysis of FEMA data

Increasing FEMA Engagement and Reducing Cost Shares

On January 21, 2021, the Biden Administration announced plans to increase FEMA's support for state and local governments for pandemic response and recovery by providing full reimbursement for vaccination efforts, eligible facility reopening, as well as the cost of National Guard personnel involved in the response.³⁰⁴ The decision to take these steps to increase FEMA's engagement in the response and to reduce nonfederal cost shares resulted in increased obligations from the DRF for Public Assistance, which can be seen in **Figure 7**. In fact, the impact of the LWA coupled with this expanded role resulted in projections that FEMA would exhaust the resources in the DRF prior to the end of the fiscal year, which can be seen in the January and February columns of **Figure 6**. In response, the American Rescue Plan Act of 2021 (P.L. 117-2; ARPA) included \$50 billion in budget authority for the DRF.

³⁰² For more information on the Lost Wages Assistance program, see CRS Insight IN11492, *COVID-19: Supplementing Unemployment Insurance Benefits (Federal Pandemic Unemployment Compensation vs. Lost Wages Assistance)*, by Katelin P. Isaacs and Julie M. Whittaker.

³⁰³ FEMA, *Disaster Relief Fund: Monthly Report as of September 30, 2020*, Oct. 7, 2020, pp. 13, 25, <https://www.fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports>.

³⁰⁴ Executive Office of the President, *National Strategy for the COVID-19 Response and Pandemic Preparedness*, Washington, DC, Jan. 21, 2021, pp. 10, 15, and 17, <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

“Slush Fund” or “Required Flexibility?”

To be clear, the exercise of Stafford Act authorities for nationwide pandemic response is a new approach, and not one proscribed by law, but Congress has chosen not to push the executive branch to take a different approach. The exercise of the flexibility provided in the Stafford Act that made a novel approach to a new crisis possible may ultimately jeopardize the political viability of the general disaster relief program, if the DRF funding mechanism starts to be perceived as a “slush fund” for an administration to accomplish ends beyond the agreed-upon disaster relief construct.

In the case of the LWA, the Trump Administration created a new program within the Stafford Act structure using a new interpretation of existing authorities, thus creating a second unemployment program aside from the statutorily-authorized Disaster Unemployment Assistance. It did so at least in part in response to a congressional impasse on how to proceed on unemployment assistance,³⁰⁵ using resources already appropriated by Congress. In doing so, it provided those appropriated funds in a way not previously envisioned and out of proportion with previous precedent, resulting in a significant increase in the spend-down rate of DRF balances, which were provided for a range of disasters, not just the COVID-19 pandemic.

In the second case, the Biden Administration took a new policy approach within the authorities of the Stafford Act, increasing the degree of FEMA’s involvement with the response beyond the precedent set by the prior Administration, and also increased the share of costs assumed by the federal government. In using flexibilities found within the Stafford Act, this increased level of engagement has resulted in increased obligations over time that have, in turn, required additional appropriations—though this surge in obligations did not compare to those for LWA.

Congress has at times expressed concerns when an Administration has used appropriated resources differently than Congress envisioned. With disasters (including pandemics), a quick response and a flexible approach are essential to meet the unique needs and challenges presented by novel circumstances. However, given that Congress ultimately controls the power of the purse, and periodically reins in federal spending, it remains to be seen if Congress will accept as a precedent the way these two Administrations have approached pandemic response and recovery through the Stafford Act, or change the Stafford Act or its funding mechanism as a result.

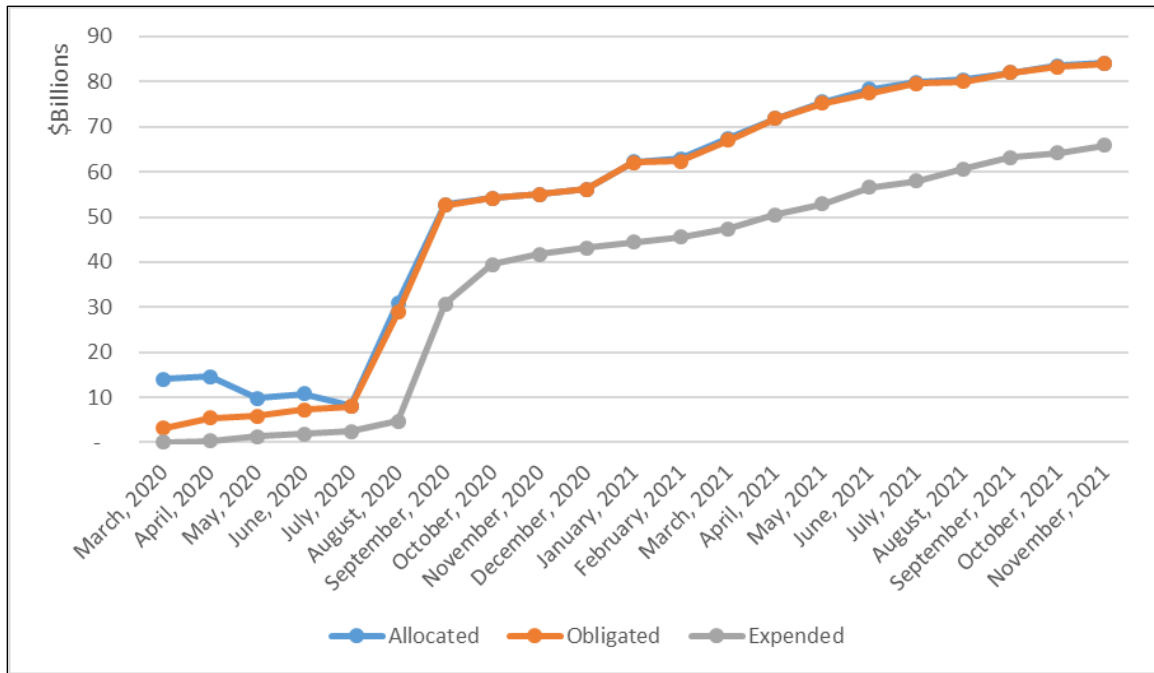
A Catastrophic Disaster Like No Other

As Congress considers whether future pandemics should be addressed with Stafford Act authorities and resources, it may consider how a pandemic affects the disaster relief budget in contrast to a more traditional disaster. Pandemics have a long incident period, and do not cause the physical infrastructure damage seen in more traditional “kinetic” disasters. The pattern of assistance required may not conform to existing programmatic structures and mechanisms.

As a disaster that has cost more than \$500 million from the DRF to date, the COVID-19 pandemic is categorized as a catastrophic incident. Accordingly, the allocation, obligation, and expenditure of DRF resources for the pandemic is tracked in the DRF monthly reports. This pattern of planning, legal obligation to fund, and provision of resources for COVID-19 pandemic declarations is shown in **Figure 8**. Month 6 and 7 represent the increased obligations due to LWA, and month 11 shows the jump in obligations based on the Biden Administration’s changes in COVID-19 pandemic policy.

³⁰⁵ Lindsey McPherson and Niels Lesniewski, “Coronavirus Relief Talks Stuck on Scope of Aid,” *CQ News*, July 31, 2020.

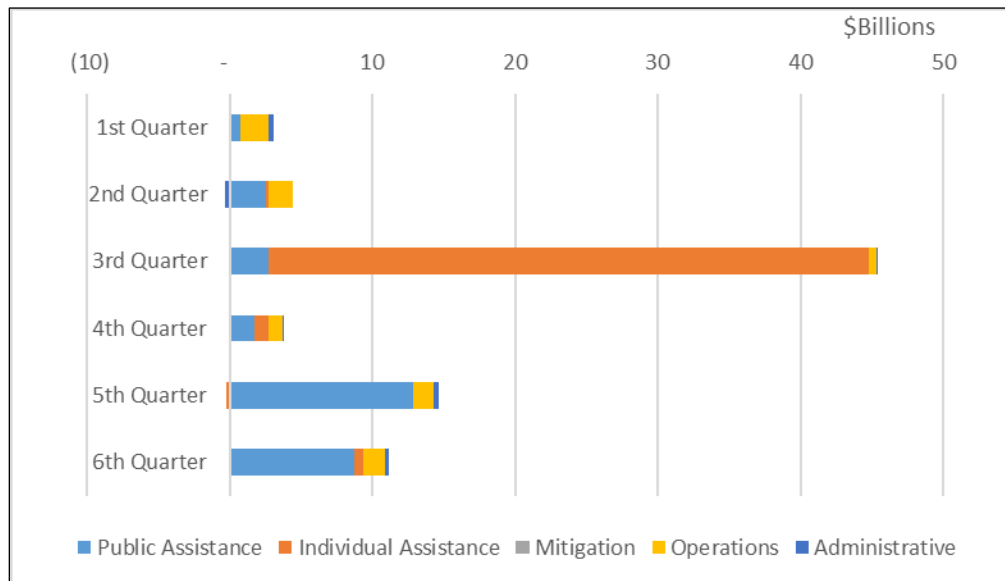
Figure 8. Cumulative Allocations, Obligations, and Expenditures from the DRF for COVID-19



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix D.

Congress has required FEMA to report monthly on a handful of catastrophic incidents with a degree of programmatic detail. In addition to obligations for COVID-19, programmatic obligations for Hurricanes Sandy, Harvey, Irma, and Maria are tracked on a quarterly basis. As in **Figure 8**, the impact of LWA and the expanded FEMA role are both visible in **Figure 9**.

Figure 9. COVID-19 DRF Obligations by Program and Quarter



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix C.

Notes: First quarter is FY2020, Q2.

The following four figures show nine quarters of spending data by program for each of the four hurricanes. Presenting data by generic quarter starting with the quarter in which the disaster struck allows for visual comparison to identify patterns.

Figure 10 shows the quarterly spending on each program type from the DRF for Hurricane Sandy. Note that the scale is roughly a fifth of that for the COVID-19 pandemic (**Figure 9**). Hurricane Sandy struck in October 2012, triggering 13 major disaster declarations. Of the four compared catastrophic hurricanes, Hurricane Sandy occurred earliest in the quarter. Unlike the other three graphics, the first bar represents two combined quarters due to limitations of the available data.

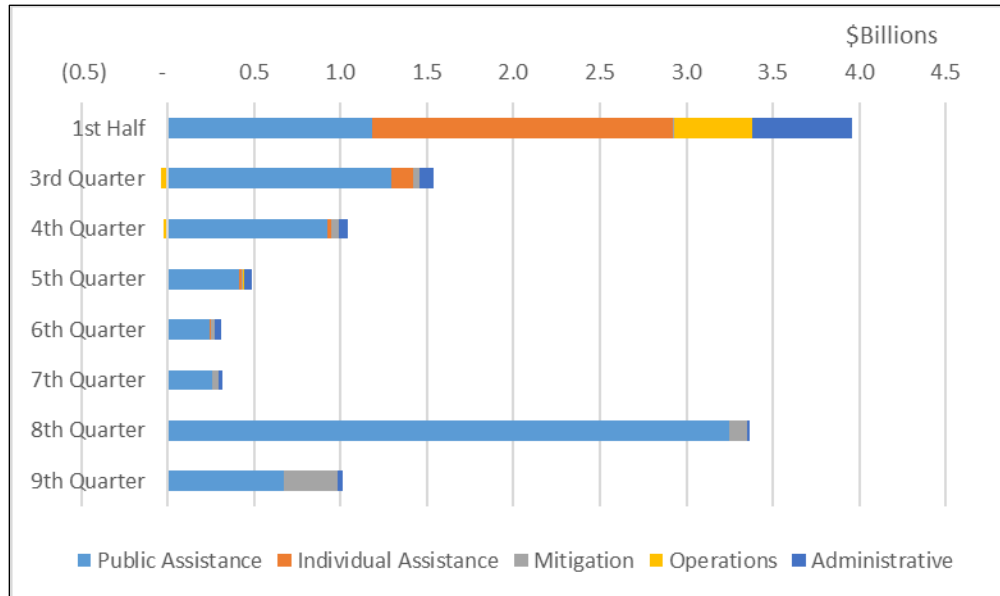
Figures 10-13 illustrate patterns that are associated with traditional disasters:

- Early in the incident, Individual Assistance, Operations, and Administrative functions are all present, but decline thereafter, with some costs being recovered in quarters post-obligation;
- Public Assistance is present throughout response and recovery phases; and
- Mitigation funding associated with the disaster is obligated later in the process.

Figure 11 shows the initial quarters of spending for Hurricane Harvey, which struck Texas and Louisiana in August and September 2017. **Figure 12** shows the initial spending for Hurricane Irma, which struck Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina in September 2017. **Figure 13** shows the initial spending for Hurricane Maria, which struck Puerto Rico and the U.S. Virgin Islands in September 2017. The decreased level of 1st quarter spending over **Figures 11-13** in part reflects the increasing closeness of the events to the end of the fiscal quarter.

Reasons why the pattern of obligations differs between the COVID-19 pandemic and these hurricanes include the fact that the incident types are radically different, the lack of defined policy for FEMA engagement, response and recovery policy shifts, the sheer breadth of the country covered by the COVID-19 declarations, and the fact that the COVID-19 incident period (the active operation of the forcing incident) continues. None of the other incident periods extended for more than a month. Given that FEMA and its response and recovery authorities are structured to respond to incidents of a shorter period and a more limited geographic range than a pandemic, responding to a global event with a months-long incident period presented FEMA with a range of emergency management challenges.

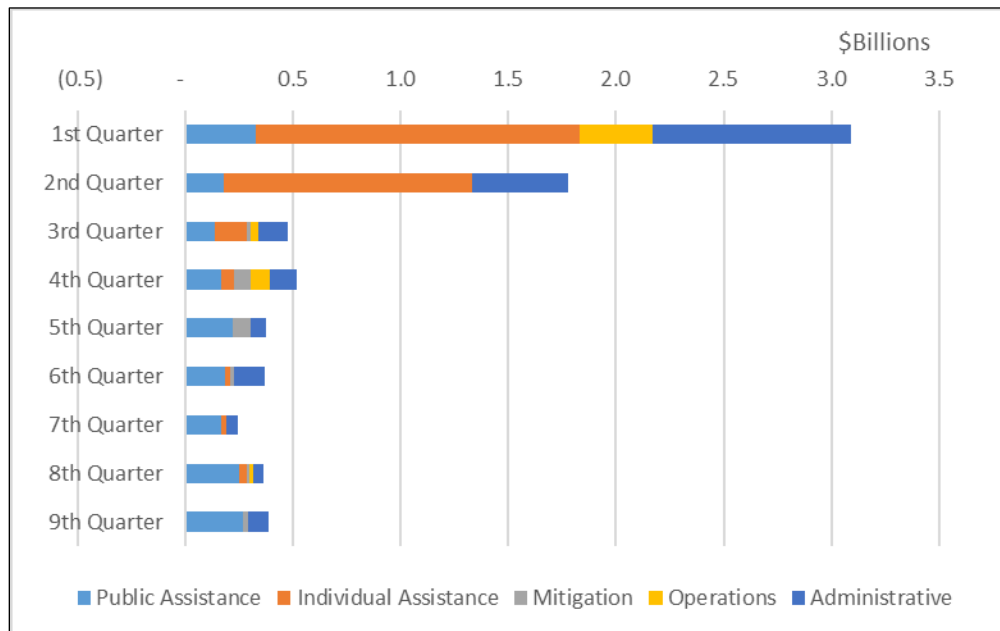
Figure 10. Hurricane Sandy DRF Obligations by Program and Quarter



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix C.

Notes: First half is FY2013, Q1 and Q2, due to the structure of FEMA's data in the initial DRF quarterly reports.

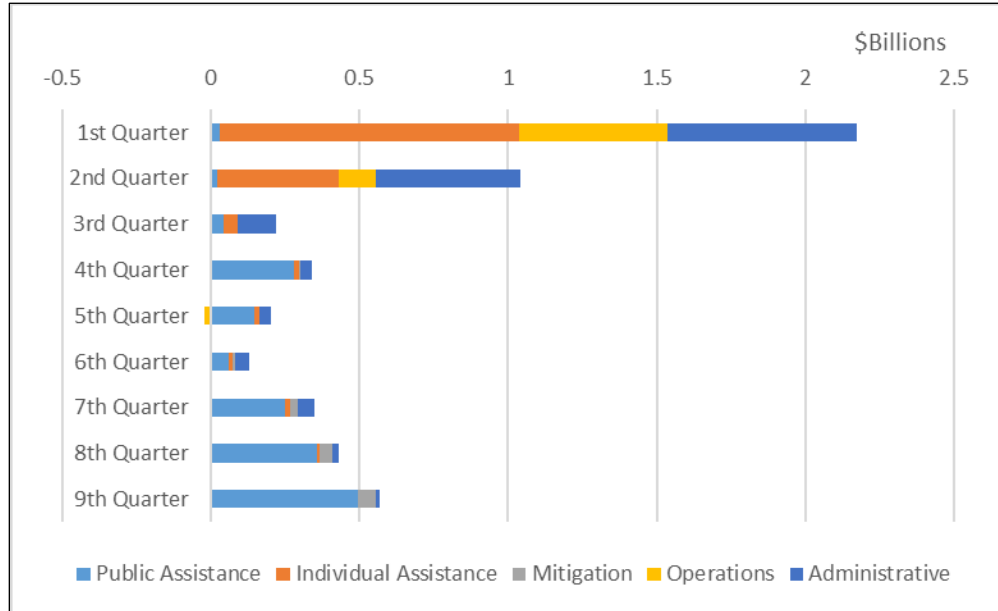
Figure 11. Hurricane Harvey DRF Obligations by Program and Quarter



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix C.

Notes: First quarter is FY2017, Q4.

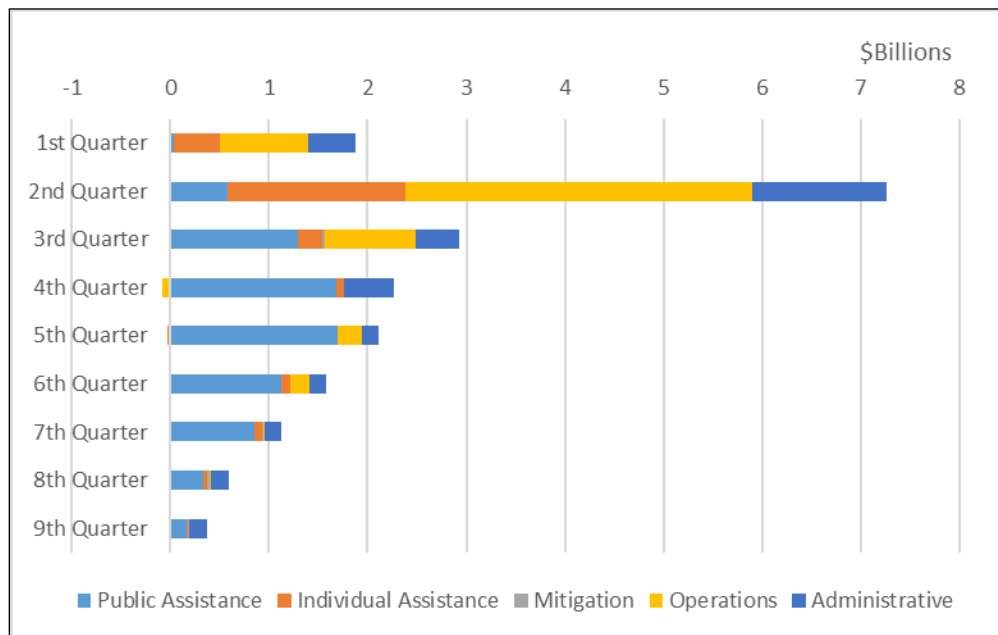
Figure 12. Hurricane Irma DRF Obligations by Program and Quarter



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix C.

Notes: First quarter is FY2017, Q4.

Figure 13. Hurricane Maria DRF Obligations by Program and Quarter



Source: CRS analysis of data compiled from FEMA DRF monthly reports, Appendix C.

Notes: First quarter is FY2017, Q4.

Conclusion

Congress faces an ongoing nationwide disaster that has tested FEMA and its statutory authorities. In its current form, the Stafford Act predominately authorizes assistance for sudden-onset disasters with measurable structural damages. FEMA policies and practices plan localized responses to local hazards. FEMA and its partners rapidly modified and continue to modify these plans and practices to respond to the unprecedented COVID-19 pandemic. As the pandemic evolves, so has FEMA's role and response.

FEMA's role in the COVID-19 pandemic has thus raised basic questions about the purpose and capacity of the agency and the Stafford Act. Is the Stafford Act an effective and appropriate statutory framework for responding to widespread public health incidents? Should the agency plan to lead future federal responses to infectious disease incidents? If so, how, if at all, must FEMA's workforce and authorities change to ensure coherent, timely, and effective federal responses to future public health incidents? If the President is to activate the Stafford Act to promote response and recovery to novel, slow-onset and diffuse hazards like the COVID-19 pandemic, what assistance should it authorize, and how might assistance be requested and distributed across many or all jurisdictions? If the DRF is to serve as a key resource for future public health and infectious disease incidents, how, if at all, should Congress modify, restructure, and scale DRF appropriations?

Congress also faces key questions regarding the Defense Production Act and how, if at all, FEMA should continue to coordinate its activation on the part of the federal government. Should the DPA be used more broadly in future public health disasters, and if so, should FEMA continue to coordinate DPA activation?

In the wake of the pandemic, the 117th Congress may wish to determine if—and how—the Stafford Act and FEMA should adapt.

Appendix A. Key FEMA Authorities for Pandemic Response

Table A-1. Select FEMA Authorities Relevant to Federal Pandemic Response

Name of Authority	Type of Authority	Relevance to Pandemic
The Robert T. Stafford Disaster Relief and Emergency Assistance Act	Statute	The Stafford Act, through delegated authorities, enables FEMA to provide and coordinate a broad range of assistance following a Stafford Act declaration. Stafford Act declarations of emergency and major disaster for the pandemic authorized Public Assistance for subfederal governments and nonprofits, Individual Assistance for individuals and households, and Hazard Mitigation Assistance for communities. President Trump issued a national emergency declaration on March 13, 2020, and began issuing major disaster declarations on March 20, 2020.
The Homeland Security Act of 2002, as amended by Post-Katrina Emergency Management Reform Act (PKEMRA)	Statute	The Homeland Security Act (HSA) made the DHS Secretary responsible for helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies; aiding recovery from terrorist attacks and major disasters; and consolidating existing federal government emergency response plans into a single, coordinated national response plan. PKEMRA revised the HSA to enhance FEMA's authority before and after domestic disasters and increase the agency's autonomy within DHS. Under PKEMRA, the Administrator of FEMA "shall lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents." ³⁰⁶ FEMA cited the HSA, as amended by PKEMRA, as among the authorities that "played a major role in shaping the response to COVID-19." ³⁰⁷
Defense Production Act of 1950 (DPA)	Statute	The DPA confers upon the President a broad set of authorities to influence domestic industry in the interest of national defense, including against natural hazards like the COVID-19 pandemic. FEMA is the designated coordinator of DPA actions across the government and invoked the statute numerous times during the pandemic response.
Title 44 of the Code of Federal Regulations	Federal Regulations	CFR Title 44 interprets FEMA's response and recovery authorities under the Stafford Act, including authority to deliver assistance through Mission Assignments and the Public Assistance and Individual Assistance grant programs that were mobilized for the pandemic response.
Presidential Policy Directive-44 (PPD-44)	Presidential Directive	PPD-44 is not a public document and is unavailable for CRS review. President Barack H. Obama issued the directive in November 2016. FEMA explains that PPD-44 "provides for the identification of a lead federal agency and senior response official to lead coordination of the Federal Government's incident response." ³⁰⁸ FEMA cites this authority as that under which it supported HHS in its initial role as the lead federal agency for the federal pandemic response. ³⁰⁹

³⁰⁶ Section 505 of Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), P.L. 109-295; 6 U.S.C. §313.

³⁰⁷ FEMA, *Initial Assessment Report*, p. 168.

³⁰⁸ *Ibid.*, p. 174.

³⁰⁹ *Ibid.*, p. 23.

Name of Authority	Type of Authority	Relevance to Pandemic
Homeland Security Presidential Directive-5 (HSPD-5)	Presidential Directive	HSPD-5 directs the development and adoption of a domestic incident management system. It assigns some incident response roles to particular agency heads and compels the adoption of the National Incident Management System (NIMS) by all federal agencies. It mandated the development and adoption of a National Response Plan (NRP), which was superseded by the National Response Framework. Both NIMS and the NRP address integration with SLTT governments. Beginning in FY2005, HSPD-5 compelled the adoption of NIMS as a requirement for federal preparedness grants. FEMA states that local, state, tribal and territorial jurisdictions are required to adopt NIMS in order to receive federal preparedness grants, and some preparedness grant funding was used for SLTT pandemic response.
<i>National Response Framework</i>	DHS Interagency Guidance	The <i>National Response Framework (NRF)</i> describes and presents itself as a guide to how the nation may respond to all types of domestic disasters and emergencies. The <i>NRF</i> is the highest-level federal document for incident response strategy. At a high level, it identifies, aligns, and coordinates key roles and responsibilities across the nation including all levels of government, nonprofits, and nongovernmental organizations. The <i>NRF</i> -assigned responsibility for efforts including public health incident management and logistics informed response operations during the COVID-19 pandemic.
Federal Interagency Operational Plans (FIOPs)	DHS Interagency Guidance	Federal Interagency Operational Plans (FIOPs) operationalize DHS strategic domestic incident management frameworks, including the <i>NRF</i> . FIOPs describe how federal government agencies align resources to implement domestic incident management plans. There is a FIOP for each emergency management issue area—prevention, protection, mitigation, response, and recovery. FEMA notes that, given the pandemic response, the FIOPs may warrant revision “to incorporate PPD-44 and the use of multiple agency authorities during a response and revising or creating more operational and tactical documents,” and “to reflect more accurately the role of a UCG in an interagency, nationwide catastrophic response.” ³¹⁰
National Incident Management System (NIMS)	DHS Interagency Guidance	The National Incident Management System (NIMS) outlines a flexible incident response management structure (reflecting the Incident Command Structure) and vocabulary that may be used at local, state, regional, or national levels. ³¹¹ NIMS/ICS principles and organizational structures informed federal and subfederal pandemic response efforts.
Incident Command System (ICS)	DHS Interagency Guidance	The Incident Command System (ICS) standardizes chains of command, organizational hierarchies, resource management and communication processes, and functional areas for field-level incident management operations. ³¹² It is aligned with the <i>NRF</i> and <i>NIMS</i> . <i>NIMS/ICS</i> principles and organizational structures informed federal and subfederal pandemic response efforts.

³¹⁰ Ibid., pp. 33, 37.

³¹¹ FEMA, *National Incident Management System*, Third Edition, Oct. 2017, https://www.fema.gov/sites/default/files/2020-07/fema_nims_doctrine-2017.pdf.

³¹² Emergency Management Institute (a FEMA-run training institute), *ICS Review Document*, Mar. 2018, <https://training.fema.gov/emiweb/is/icsresource/assets/ics%20review%20document.pdf>.

Name of Authority	Type of Authority	Relevance to Pandemic
<i>National Biodefense Strategy</i> (2018)	Presidential Strategy	The <i>National Biodefense Strategy</i> identifies five high-level goals, and supporting objectives, to help the U.S. prepare for and respond to biological incidents. ³¹³ HHS reports that “[t]hroughout the pandemic, the Biodefense Coordination Team has continued its work to implement the strategy and protect the nation from current and future biological threats.” ³¹⁴
<i>Biological Incident Annex to the National Response Framework</i>	FEMA Interagency Guidance	The <i>Biological Incident Annex</i> to the Response Federal Interagency Operational Plan, finalized in 2017 by the Department of Homeland Security, adapts federal agency planning efforts to all types of biological incident. ³¹⁵ The federal government’s pandemic response plan tailored to the COVID-19 pandemic cites the <i>Biological Incident Annex</i> as “guiding doctrine.” ³¹⁶
<i>Federal Pandemic Crisis Action Plan (PanCAP)</i>	FEMA Interagency Guidance	The <i>Pandemic Crisis Action Plan (PanCAP)</i> , authored by FEMA in 2013 and updated in 2018, adapts existing federal authorities and interagency response plans to address a pandemic. ³¹⁷ These plans were subsequently adapted specifically to the COVID-19 pandemic in <i>PanCAP-Adapted</i> (see below).
<i>Federal Pandemic Crisis Action Plan Adapted for COVID-19 Pandemic (PanCAP-Adapted)</i>	HHS Interagency Guidance	HHS adapted the <i>PanCAP</i> into the <i>PanCAP-Adapted</i> specifically to guide response to the COVID-19 pandemic. It was released on March 13, 2020. According to the GAO, it remained an operative planning guide despite early modifications to agency roles and responsibilities, including FEMA’s assumption of leadership of the coordinated federal response.

Source: CRS Analysis of authorities relevant to FEMA’s pandemic response, including those identified in FEMA, *Initial Assessment Report*, pp. 168-175 and HHS, *PanCAP-Adapted*.

³¹³ HHS, “National Biodefense Strategy: Goals and Objectives,” <https://www.phe.gov/Preparedness/biodefense-strategy/Pages/goals-and-objectives.aspx>; President Donald J. Trump, “Presidential Memorandum on the Support for National Biodefense,” Sept. 18, 2018, <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-support-national-biodefense/>. See also GAO, *Biodefense: After-Action Findings*.

³¹⁴ HHS, “National Biodefense Strategy,” <https://www.phe.gov/Preparedness/biodefense-strategy/Pages/default.aspx>.

³¹⁵ Department of Homeland Security, “Biological Incident Annex to the Response and Recovery Federal Interagency Operational Plans,” final version, Jan. 2017, https://www.fema.gov/sites/default/files/2020-07/fema_incident-annex_biological.pdf.

³¹⁶ HHS, *PanCAP-Adapted*, p. 6.

³¹⁷ FEMA, *Pandemic Crisis Action Plan*, Version 2.0, Jan. 2018. Provided to CRS by the FEMA Office of Congressional and Legislative Affairs. Available upon request to congressional members and staff.

Appendix B. Bibliography—Selected Resources

GAO Reports

Government Accountability Office (GAO), *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, GAO-22-105051, October 2021, <https://www.gao.gov/products/gao-22-105051>.

GAO, *Biodefense: After-Action Findings and COVID-19 Response Revealed Opportunities to Strengthen Preparedness*, GAO-21-513, August 2021, <https://www.gao.gov/assets/gao-21-513.pdf>.

GAO, *COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity*, GAO-21-551, July 19, 2021, <https://www.gao.gov/products/gao-21-551>.

GAO, *COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year*, GAO-21-387, March 31, 2021, <https://www.gao.gov/products/gao-21-387>.

GAO, *COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and Other Challenges Require Focused Federal Attention*, GAO-21-265, January 28, 2021, <https://www.gao.gov/products/gao-21-265>.

GAO-20-273, *COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response*, GAO-21-191, November 30, 2020, <https://www.gao.gov/products/gao-21-191>.

GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, GAO-20-701, September 21, 2020, <https://www.gao.gov/products/gao-20-701>.

GAO, *COVID-19: FEMA's Role in the Response and Related Challenges*, GAO-20-685T, July 14, 2020, <https://www.gao.gov/products/gao-20-685t>.

GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, GAO-20-625, June 25, 2020, <https://www.gao.gov/products/gao-20-625>.

GAO, *Biodefense: Federal Efforts to Develop Biological Threat Awareness*, GAO-18-155, October 2017, <https://www.gao.gov/products/gao-18-155>.

CRS Insights and Reports

CRS Insight IN11582, *FEMA Funeral Assistance for COVID-19*, by Elizabeth M. Webster.

CRS Report R46809, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic*, coordinated by Erica A. Lee and Sarah A. Lister.

CRS Insight IN11229, *Stafford Act Assistance for Public Health Incidents*, by Erica A. Lee and Bruce R. Lindsay.

CRS Insight IN11593, *New Presidential Directives on the Defense Production Act (DPA) and the COVID-19 Pandemic*, by Heidi M. Peters and Erica A. Lee.

CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire.

CRS Insight IN11492, *COVID-19: Supplementing Unemployment Insurance Benefits (Federal Pandemic Unemployment Compensation vs. Lost Wages Assistance)*, by Katelin P. Isaacs and Julie M. Whittaker.

CRS Report R46379, *Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act*, coordinated by Jennifer K. Elsea.

Office of Inspector General Reports

Department of Homeland Security (DHS) Office of Inspector General (OIG), *Lessons Learned from FEMA's Initial Response to COVID-19*, OIG-21-64, September 19, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-64-Sep21.pdf>.

After-Action Reports

Federal

FEMA, *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, FEMA Operations January through September 2020, January 2021, https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf.

State, Local, Tribal, and Territorial Government Stakeholders

National Homeland Security Consortium (SLTT and private sector representatives), *COVID-19 Pandemic After-Action Report*, June 2021, <https://www.astho.org/COVID-19/NHSC-COVID-19-Pandemic-After-Action-Report/>.

City of Burlington, Vermont, *COVID-19 Pandemic Response After Action Report*, June 4, 2021, <https://www.burlingtonvt.gov/sites/default/files/COVID19%20After%20Action%20Report%2006042021.pdf>.

City Of Kirkland, Washington, *COVID-19 Initial Response After Action Report*, November 13, 2020, <https://www.kirklandwa.gov/files/sharedassets/public/fire/emergency-mgmt/plans/kirkland-covid-19-initial-aar-11-2020.pdf>.

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