Congressional Research Service
Informing the legislative debate since 1914

FEMA's Community Disaster Loan Program: History, Data, and Issues for Congress

December 14, 2022

Congressional Research Service
https://crsreports.congress.gov
R47342

CRS REPORT
Prepared for Members and
Committees of Congress

SUMMARY

R47342

December 14, 2022

Adam G. Levin
Analyst in Economic Development Policy

FEMA's Community Disaster Loan Program: History, Data, and Issues for Congress

Following a disaster, as businesses may close, properties may be abandoned, and tourism may decline, and local governments may lose revenue needed to support key activities such as trash collection, police and fire services, and other everyday government functions. To help address such situations, the Federal Emergency Management Agency (FEMA) offers community disaster loans (CDLs) to local governments that experience a substantial loss of tax and other revenue as a result of a presidentially declared major disaster and require financial assistance to continue routine operations.

Congress first authorized the CDL program in the Disaster Relief Act of 1974 (P.L. 93-288). Between 1974 and April 2022 FEMA approved 482 CDLs for 52 different major disasters. In the program's first three decades, it attracted only occasional congressional attention and local governments used it relatively sparingly; 13% of the 482 approved CDLs were before 2006. Congress has since passed legislation altering aspects of the CDL program four times, most recently in 2020. These actions did not permanently change the CDL program, but rather provided temporary exceptions to the program's statute and regulations, creating event-based CDL cohorts. Most often, the amendments increased CDL loan limits (typically capped at $5 million) and made more funds available to local governments suffering the impacts of major hurricanes and floods.

Statute also provides local governments the option to request CDL forgiveness, and local governments frequently receive forgiveness of CDL balances. As of April 2022, FEMA (and at times, Congress) has forgiven over 97% of total CDL principal. Congress has periodically discussed CDL forgiveness policy. For instance, the amended version of the CDL program that Congress passed following Hurricanes Katrina and Rita in 2005 initially did not allow loan forgiveness. This led to some debate, as the stipulation differed from the standard CDL statute. Congress subsequently allowed forgiveness for these CDLs through later legislation.

FEMA generally has discretion for forgiving CDLs. However, Congress may also forgive CDLs, as it did through a continuing resolution passed in September 2021 (P.L. 117-43) that forgave all outstanding CDL balances, totaling nearly $860 million.

Congress may wish to consider certain issues related to the CDL program. Those include:

- **CDLs' $5 million loan cap.** Congress has not passed legislation permanently raising the cap since its 2000 implementation. Large and mid-size cities may have operating budgets many times larger than $5 million, which could influence how effectively a CDL can support maintenance of government operations.
- **Use of CDLs for "non-traditional" disasters.** Local governments generally use CDLs for disasters such as hurricanes and floods. However, other disasters may qualify. For example, the Coronavirus Disease 2019 (COVID-19) pandemic resulted in major disaster declarations in every state. Although no local governments used CDLs to address COVID-19 revenue losses, Congress may wish to discuss the use of CDLs in these types of "non-traditional" situations.
- **Loan forgiveness policy and the cost of disaster assistance.** CDLs' frequent forgiveness may play a role in debates about how much the federal government spends on disaster assistance, as well as questions of how the federal government should balance its responsibility to help communities experiencing disaster-related fiscal concerns.
- **Whether to convert CDLs from a loan to a grant program.** Some Members of Congress and local government officials periodically suggest such a change, given the forgiveness rate. Congress may wish to consider the tradeoffs between grant and loan programs, including the type of oversight involved and purpose of each type of program.

Contents

Figures

Tables

Contacts

Introduction

Following a major disaster, local governments may face fiscal and economic distress as well as physical damage. A disaster can negatively affect jobs, retail sales, property values, and tourism—among the primary revenue sources for most local governments. For example, following Hurricane Katrina in August 2005, employment in New Orleans in the first quarter of 2006 was down 41% from the same period a year earlier.[1]

As a result, revenue shortfalls could affect service delivery in the affected locality. To address this, the Federal Emergency Management Agency (FEMA) offers the Community Disaster Loan (CDL) program, which provides forgivable loans capped at $5 million to units of local government based on revenue loss. This report provides an overview of the CDL program, discusses the program's history, examines data on the program (including on trends in loan approval, disbursal, and forgiveness), and presents selected policy considerations.

Readers may find two related CRS products on the CDL program useful:

- CRS In Focus IF11600, *FEMA's Community Disaster Loan (CDL) Program: A Primer*, by Adam G. Levin.
- CRS In Focus IF12128, *FEMA's Community Disaster Loan Program: Loan Forgiveness*, by Adam G. Levin.

Overview of the CDL Program

Congress created the Community Disaster Loan (CDL) program as part of the Disaster Relief Act of 1974 (Disaster Relief Act, P.L. 93-288) to help local governments experiencing a presidentially declared major disaster with providing core municipal services.[2] CDLs replaced an existing program of grants to local governments that provided revenue relief after a major disaster.[3] In 1988, P.L. 100-107 renamed the Disaster Relief Act the Robert T. Stafford Disaster Relief and Emergency Assistance Act (henceforth the Stafford Act; 42 U.S.C. §§5121 et seq.).[4]

Eligibility and Use

The CDL program authorizes the President to "make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has a demonstrated need for financial assistance in order to perform its governmental functions."[5]

The Stafford Act's definition of a local government includes counties, cities and towns, school and special districts, and regional or interstate government entities. It also includes Indian tribes

[1] Michael L. Dolfman, Solidelle Fortier Wasser, and Bruce Bergman, *The Effects of Hurricane Katrina on the New Orleans Economy*, Bureau of Labor Statistics, June 2007, p. 14, https://www.bls.gov/opub/mlr/2007/06/art1full.pdf.

[2] U.S. Congress, Senate Committee on Public Works, *Disaster Relief Act Amendments of 1974*, Report of the Committee on Public Works, United States Senate, to Accompany S. 3062, 93rd Cong., 2nd sess., April 9, 1974, S.Rept. 93-778, p. 9. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-107, 42 U.S.C. §§5121 et seq.) gives the President the ability to declare a major disaster, allowing the federal government to offer a variety of disaster assistance programs.

[3] 84 Stat. 1756.

[4] The Stafford Act renumbered the section containing the CDL program from Section 414 to Section 417. For more information see CRS Report WMR10001, *CRS Guide to Federal Emergency Management*, by Lauren R. Stienstra et al.

[5] 42 U.S.C. §5184(a).

or tribal organizations and Alaska Native villages or organizations. A state or a political subdivision of a state may also put in an application for Stafford Act programs for rural communities, unincorporated towns or villages, or other public entities.[6]

A "substantial loss" must occur in either the fiscal year during which the major disaster took place or the following fiscal year.[7] By regulation, FEMA may use the following criteria to assess whether a substantial loss occurred:

- Whether the major disaster caused a large enough reduction in cash receipts from normal revenue sources to significantly and adversely affect the level and/or categories of essential municipal services provided prior to the disaster; and
- Whether the major disaster caused a revenue loss of over 5% of estimated total revenue in either the fiscal year in which the disaster occurred or the following fiscal year.[8]

FEMA's criteria to determine whether a local government can demonstrate a need for financial assistance to perform government functions include:

- whether the local government has enough funds to meet current fiscal year operating requirements;
- whether the local government has available cash or other liquid assets from the prior fiscal year;
- the danger of municipal insolvency;
- the local government's financial condition, including projected expenditures for governmental services and the availability of other financial resources; and
- the local government's ability to obtain financial assistance or needed revenue from its state and other federal agencies.[9]

The relevant regulations state that CDLs may only be used to "carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs."[10] These functions include financing police and fire protection, revenue collection, hazard insurance, trash collection, and public facilities maintenance. The regulations also state that CDLs "shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities."[11] Local governments may only receive one CDL per disaster.[12]

Application Procedures

To apply, a local government first sends a CDL application to its Governor's Authorized Representative (GAR), which must approve the application. Regulations dictate that the application then goes to the FEMA regional office with geographic jurisdiction for the applying local government. FEMA's Assistant Administrator for the Disaster Assistance Directorate, or that person's designee, approves or disapproves loan requests, taking into account

[6] 42 U.S.C. §5122.

[7] 206 C.F.R. § 363(b)(2).

[8] 206 C.F.R. §§ 363(b)(2)(i)-(ii).

[9] 206 C.F.R. §§ 363(b)(3)(i)-(ix).

[10] 206 C.F.R. § 361(f).

[11] 206 C.F.R. § 361(f).

[12] 206 C.F.R. § 361(d).

recommendations from the GAR and FEMA Regional Administrator.[13] FEMA may approve CDLs in either the fiscal year in which a local government experiences a major disaster or the following fiscal year.

Loan Size and Limits

According to statute, CDLs may be as large as 25% of a local government's operating budget for the fiscal year in which the major disaster occurs, up to a maximum amount of $5 million.[14] According to regulation, the exact amount of a CDL is the lesser of the local government's projected revenue losses or 25% of the local government's operating budget for the year in which the major disaster occurred. [15] If, however, the loss of tax and other revenues is at least 75% of the operating budget in the fiscal year in which the major disaster occurs, the loan may be up to 50% of the operating budget (still capped at $5 million).[16] CDLs typically have five-year terms, which are extendable to 10 years. If there are "extenuating circumstances" and a CDL recipient "demonstrates an inability to repay the loan within the initial 10 years," FEMA may further extend the term.[17]

Regulations mandate that the exact loan size is calculated using a local government's projected revenue loss plus projected unreimbursed disaster-related expenses (UDREs) for municipal operations for the fiscal year in which the major disaster occurred and the subsequent three fiscal years. Interest rates are set at the rates for Treasury five-year securities.[18]

Congress has lifted CDLs' $5 million cap on four occasions. These actions created what FEMA calls different CDL "cohorts," which the agency delineates from the standard loan form, called the "traditional" CDL (TCDL) program.[19] In addition to TCDLs, the cohorts are:

- "special" CDLs (SCDLs) following Hurricanes Katrina and Rita, created by the Community Disaster Loan Act of 2005 (P.L. 109-88);
- CDLs following Hurricanes Ike and Gustav, created by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);
- CDLs following Hurricanes Harvey, Irma, and Maria, created by the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (P.L. 115-72); and
- CDLs following Typhoon Yutu, created by the Department of Homeland Security Appropriations Act, 2021 (P.L. 116-260).

Three of the four bills led to FEMA approving CDLs larger than $5 million. Some loans were significantly larger than $5 million. The largest, not adjusted for inflation, was for $145 million to the government of the U.S. Virgin Islands. The American Reinvestment and Recovery Act of 2009 did not result in any CDLs larger than $5 million.

---

[13] 206 C.F.R. §362(e).

[14] 42 U.S.C. §5184(b)(1).

[15] 206 C.F.R. §§364(d)(1)(i)-(ii).

[16] 42 U.S.C. §5184(b)(2).

[17] 206 C.F.R. §361(e).

[18] 206 C.F.R. § 361(e).

[19] Federal Emergency Management Agency Disaster Assistance Directorate, Public Assistance Division, *Community Disaster Loans, Program Specific Recovery Act Plan*, May 15, 2009, p. ii, https://www.dhs.gov/xlibrary/assets/recovery/FEMA_Community_Disaster_Loans.pdf.

Forgiveness

The Stafford Act codified CDL recipients' eligibility for loan forgiveness. If a local government's revenues for the three full fiscal years following the major disaster cannot pay for the government's operating budget, including UDREs, FEMA may forgive all or part of the CDL.[20]

Every fiscal year, FEMA asks CDL recipients for audited financial statements. After receiving the financial statement for the third post-disaster fiscal year, the agency performs forgiveness eligibility review. If approved, forgiveness applies to the principal and related interest. If FEMA denies forgiveness, the local government may appeal the decision and submit additional information within 60 days of the date of disapproval. The resulting decision on appeal is final.[21]

Regulations stipulate that FEMA exclude certain budgetary actions and conditions from its forgiveness evaluation. For example, if a local government uses operating funds for facilities work other than routine maintenance, or significantly increases expenditures that are not disaster related (except for increases due to inflation), FEMA reduces the operating budget accordingly to evaluate loan cancellation requests.[22] FEMA's regulations also require the agency to subtract the amount of any budget deficits existing before the disaster from the forgiveness evaluation.[23]

The vast majority of CDLs disbursed ultimately receive either full or partial forgiveness. As of April 30, 2022, 429 of 482 CDLs (89.0%) received partial or full forgiveness, accounting for 97.2% of CDL principal. For forgiven CDLs, the average period from first disbursal of CDL funds to forgiveness approval is 1,579 days, or nearly four-and-a-half years.[24] Although forgiveness is generally subject to FEMA's discretion, in September 2021, Congress and the President enacted legislation (P.L. 117-43) forgiving all outstanding CDL balances, totaling about $860 million.

Table 1 presents the average number of days from first disbursal to forgiveness approval for each CDL cohort, as well as the average number of days from a disaster declaration to first disbursal.

[20] 42 U.S.C. §5184(c)(1). UDREs for municipal operations are expenses incurred for general government operations—generally, the same type of expenses for which CDL funds may be used. UDREs do not include expenditures related to debt service, major repairs, and capital projects. See 206 C.F.R. §366(b).

[21] 206 C.F.R. §§366(d)(1)-(4).

[22] 206 C.F.R. §366(a)(4).

[23] 206 C.F.R. §366(a)(5).

[24] CRS calculation using raw data provided by FEMA. Data current as of April 30, 2022. Of the 53 CDLs that had not received any forgiveness, at least four had not yet had any funds disbursed by the time of the September 30, 2021, blanket forgiveness and were not yet eligible for forgiveness otherwise.

Table 1. Average Time from Disaster Declaration to Disbursal and Disbursal to Forgiveness

Cohort	Average Days From Disaster Declaration to First Disbursal	Average Days From First Disbursal to Forgiveness Approval
All CDLs	427	1,579
TCDLs	449	1,612
SCDLs (2006)	369	1,894
Ike and Gustav (2009)	399	1,493
Harvey, Irma, and Maria (2018-2019)	475	1,044
Yutu (2020-2021)	812	266

Source: Raw data provided by FEMA. Calculations made by CRS.

Notes: Numbers rounded to the nearest whole number. Data were current as of April 30, 2022.

Funding Process

The Disaster Assistance Direct Loan Program (DADLP) account provides funds for the CDL program. This differs from most Stafford Act programs, which are funded though the Disaster Relief Fund (DRF). The DADLP account receives funding for the CDL program in two ways. The first is through direct appropriations, which are sometimes contained in emergency supplemental appropriation bills following specific disasters. Second, transfers from the DRF also occasionally fund the DADLP account for the CDL program.

The CDL program is subject to the Federal Credit Reform Act of 1990 (FCRA; P.L. 101-508). Under FCRA, discretionary programs—including the CDL program—that provide new direct loan obligations require appropriations of budget authority equal to the loans' estimated subsidy costs. The Congressional Budget Office annually calculates the subsidy rates.[25]

As a result, appropriations to the DADLP account for the CDL program can support a larger dollar amount of loans than the amount appropriated. For example, SCDLs issued after Hurricanes Katrina and Rita had a subsidy rate of 75%.[26] That meant that after P.L. 109-88 transferred $750 million to the DADLP, FEMA could support up to $1 billion in CDLs.

Data and Trends

FEMA has approved 482 CDLs since the program's establishment.[27] This section presents data on usage history, funding, and forgiveness.

[25] The Office of Management and Budget defines a loan's subsidy rate as "the estimated lifetime cost to the Government of a direct loan or loan guarantee calculated on a net present value basis, and expressed as a percentage per dollars disbursed." See Office of Management and Budget, *Credit Supplement, Budget of the U.S. Government, Fiscal Year 2023*, https://www.whitehouse.gov/wp-content/uploads/2022/04/cr_supp_fy2023.pdf.

[26] Office of Management and Budget, *Federal Credit Supplement, Budget of the U.S. Government, Fiscal Year 2014*, p. 42, https://www.govinfo.gov/content/pkg/BUDGET-2014-FCS/pdf/BUDGET-2014-FCS.pdf.

[27] The most recent data available are from April 30, 2022.

Usage History

Table 2 shows the number of CDLs approved by year, as well as the sum of the approved amounts.

Table 2. CDL Approvals by Year

Year	Number of CDLs Approved	Total Approved Amount (millions)
Pre-1992	25	$97.92
1992	2	$11.37
1993	33	$40.29
1996	2	$127.84
1999	1	$0.80
2001	1	$1.42
2006	157	$1,270.50
2008	4	$4.44
2009	24	$60.55
2012	6	$5.01
2013	60	$174.02
2015	8	$15.45
2016	2	$0.71
2017	9	$13.55
2018	91	$622.42
2019	10	$35.35
2020	27	$76.21
2021	20	$151.40
Total	**482**	**$2,709.28**

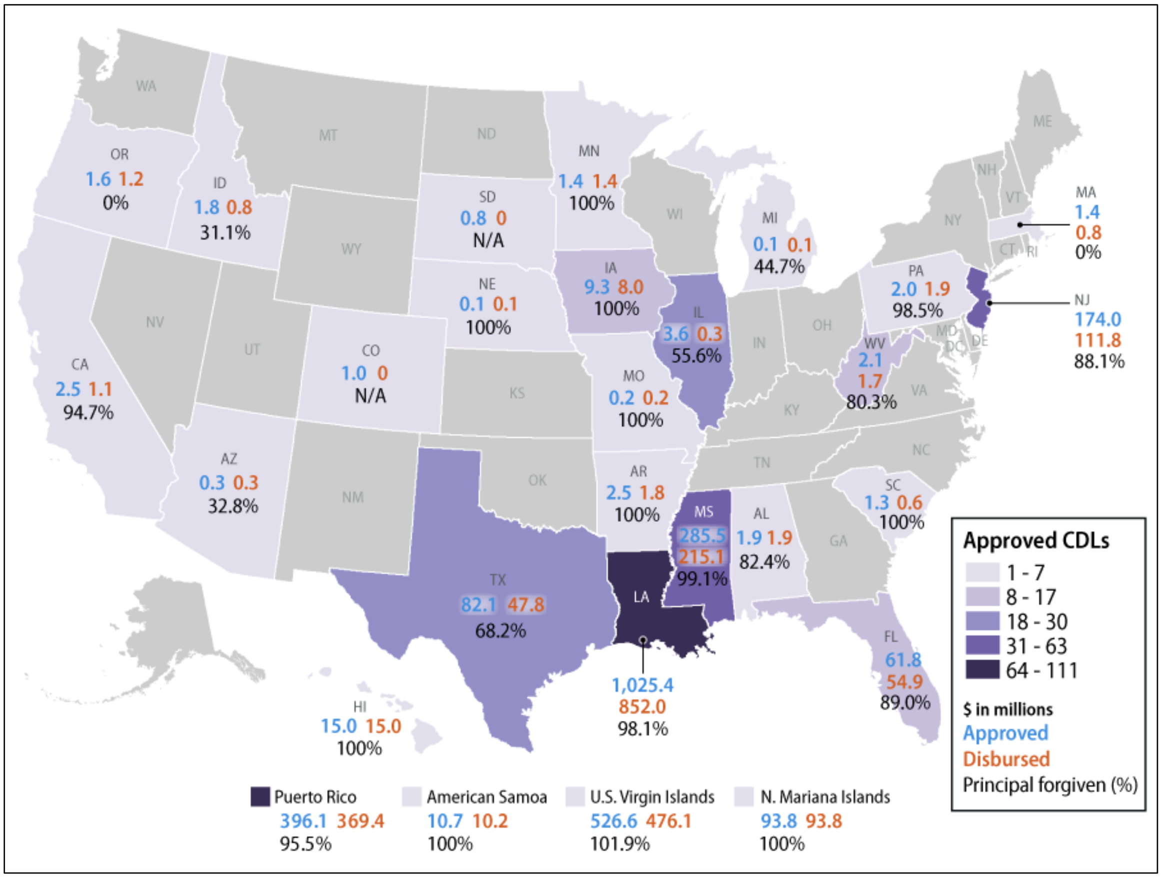
Source: Raw data provided by FEMA. Calculations made by CRS. Data current as of April 30, 2022.

Notes: FEMA did not provide specific data regarding approval prior to 1992. Approved amounts are not adjusted for inflation. Dollar figures are rounded to nearest hundredth.

Figure 1 illustrates geographic distribution of CDL approvals. FEMA has granted CDL approvals to local governments in 25 states and four U.S. territories.[28]

[28] The Stafford Act, at 42 U.S.C. §5122(2)-(3), defines a "major disaster" as "any natural catastrophe ... in any part of the United States," and further defines the "United States" as "the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands." This allows local governments in these territories to receive CDLs. FEMA has considered territorial governments—not just local governments in those territories—as being eligible for CDLs. See Federal Emergency Management Agency, "Disaster Assistance; Community Disaster Loans," 53 *Federal Register* 12681, April 18, 1988.

Figure 1. CDLs by State



Source: Raw data provided by FEMA. Calculations made by CRS. Data current as of April 30, 2022.

Notes: Dollar amounts not adjusted for inflation. Principal forgiven is as a percentage of total loan amount disbursed. Principal forgiven for U.S. Virgin Islands (101.9%) reflects FEMA data.

Table 3 summarizes statistics for the different CDL cohorts.

Table 3. CDL Summary Data

Cohort	CDLs Approved	Dollar Amount Approved (millions)	Dollar Amount Disbursed (millions)	Average Amount Disbursed Per Loan (millions)	Principal Forgiven	Average Interest Rate
All CDLs	482	$2,709.28	$2,270.59	$4.71	97.2%	2.80%
TCDLs	202	$633.02	$472.35	$2.34	92.6%	2.89%
SCDLs (2006)	157	$1,270.50	$1,040.74	$6.63	98.6%	2.86%
Ike and Gustav (2009)	24	$60.55	$53.58	$2.23	66.6%	1.89%
Harvey, Irma, and Maria (2018-2019)	98	$656.47	$615.19	$6.28	105.9%	2.76%
Yutu (2021)	1	$88.73	$88.73	$88.73	100%	0.88%

Source: Raw data provided by FEMA. Calculations made by CRS.

Notes: Cohort years reflect when FEMA approved the loans and may not match the year in which the disaster occurred or when Congress enacted the corresponding legislation. Dollar amounts are not adjusted for inflation and are rounded to nearest hundredth. Interest rates are rounded to the nearest hundredth. Principal forgiven is as a percentage of total loan amount disbursed. Principal forgiven for Harvey, Irma, and Maria loans (105.9%) reflects FEMA data. Data were current as of April 30, 2022.

Table 4 presents the five disasters resulting in the most CDLs. CDL issuance has been somewhat concentrated on certain disasters. Hurricane Katrina resulted in both the highest number and largest dollar amount of approved CDLs.

Table 4. Disasters Resulting in Most CDL Approvals

Disaster	Approved CDLs	Year	Dollar Amount Approved (millions)
Hurricane Katrina-Louisiana	100	2005	$999.90
Hurricane Maria	78	2017	$306.40
Hurricane Sandy	60	2012	$174.02
Hurricane Katrina-Mississippi	57	2005	$270.62
Flooding and Levee Breaks-Illinois	28	1993	$3.61

Source: Raw data provided by FEMA. Calculations made by CRS.

Notes: Dollar amounts are not adjusted for inflation and are rounded to nearest hundredth. Data were current as of April 30, 2022.

Funding

Table 5 shows transfers and appropriations to the DADLP for the CDL program since FY1992, the first year Congress transferred funds from the DRF to the DADLP for the CDL program.

Table 5. Appropriations and Transfers to the DADLP Account for CDLs, FY1992-FY2022

Fiscal Year	Public Law and U.S. Statutes Citation	Appropriated Amount (millions)	Transferred Amount (millions)
1992	P.L. 102-368, 106 Stat. 1159	—	Not to exceed $50.0
1993	P.L. 102-389, 106 Stat. 1605	—	Not to exceed $200.0[a]
1995	P.L. 103-327, 108 Stat. 2336	$12.5	—
1996	P.L. 104-134, 110 Stat. 1321-1334	—	Up to $104.0
1997	P.L. 105-18, 111 Stat. 200	—	Up to $20.0
2006	P.L. 109-88, 119 Stat. 2061	—	Up to $750.0
2006	P.L. 109-234, 120 Stat. 459	$279.8	—
2008	P.L. 110-329, 122 Stat. 3592	—	Up to $98.15
2013	P.L. 113-2, 127 Stat. 29	$300.0	—
2018	P.L. 115-72, 131 Stat. 1225	Up to $4,900.0	—
2021	P.L. 116-260. 134 Stat. 1462	—	Up to $250.0
2022	P.L. 117-43, 135 Stat. 365	—	$50.0[b]

Source: CRS analysis of enacted appropriation and other bills.

Notes: Excludes transfers for administrative expenses. All transfers come from the Disaster Relief Fund.

a. This amended the amount transferred in P.L. 102-368.

b. This was to pay for the CDL forgiveness included in P.L. 117-43 and was an estimate from the accompanying Senate report; no specific amount was included in the law.

Table 6 provides the subsidy rates for CDLs from FY2013 to FY2023, including for the loans following Hurricanes Harvey, Irma, and Maria, for which Congress removed the $5 million cap. Historically, CDLs have a high subsidy rate compared to other discretionary program direct loans made by the federal government, despite decreasing in recent years.[29]

[29] For example, the Small Business Administration's Disaster Assistance Loans and the Department of the Treasury's Community Development Financial Institutions Financial Assistance Program, both discretionary program direct loans, had respective subsidy rates of 12.91% and 9.08% for FY2023. See Office of Management and Budget, *Credit Supplement, Budget of the U.S. Government, Fiscal Year 2023*, pp. 3-4, https://www.whitehouse.gov/wp-content/uploads/2022/04/cr_supp_fy2023.pdf.

Table 6. CDL Subsidy Rates, FY2013-FY2023

Fiscal Year	Subsidy Rate
2013	91.63%
2014	Subsidy rate not reported
2015	96.35%
2016	91.05%
2017	91.03%
2018—Harvey, Irma, and Maria CDLs	98.89%
2018	90.33%
2019—Harvey, Irma, and Maria CDLs	98.91%
2019	90.71%
2020	74.61%
2021	80.39%
2022	77.74%
2023	78.94%

Source: Office of Management and Budget, *Credit Supplement, Budget of the U.S. Government,* various years.

CDL Changes in Response to Disasters

In four instances, legislation enacted following specific disasters temporarily amended the CDL program's statutes. This section describes the specific CDL cohorts created by those laws.

Hurricanes Katrina and Rita: The SCDL Cohort

Hurricanes Katrina and Rita struck the Gulf Coast in August and September 2005, respectively. The Community Disaster Loan Act of 2005 (CDL Act of 2005; P.L. 109-88), enacted on October 7, 2005, created the "special" community disaster loan (SCDL) program. The law transferred up to $750 million from the DRF to the DADLP account to support up to $1 billion of loans to "assist local governments in providing essential services."[30] SCDLs could exceed the traditional CDL cap of $5 million.

The CDL Act of 2005 also prohibited SCDL forgiveness. No explicit explanation for the forgiveness prohibition is readily available. Congressional debate, though, suggests it was at least partially due to input from both the executive branch and certain Members of Congress. For example, Representative James Oberstar (Minnesota) said, "It is hard to swallow the insistence by the Office of Management and Budget that the loan forgiveness provision is discontinued."[31] Senator David Vitter (Louisiana) noted, "It was crystal clear to me after my conversation with

[30] 119 Stat. 2061.

[31] Rep. James L. Oberstar, House debate, *Congressional Record*, vol. 151, part 17 (October 7, 2005), p. H22706.

[the chairman of the House Appropriations Committee] that significant elements of the House of Representatives needed to see that at least at the front end, this was a loan program."[32]

In June 2006, after FEMA loaned the full amount available under the CDL Act of 2005, Congress passed and President George W. Bush signed an emergency supplemental appropriations bill (P.L. 109-234).[33] The law transferred an additional $279.8 million from the DRF to the DADLP for additional SCDLs "to assist local governments affected by Hurricane Katrina and other hurricanes of the 2005 season in providing essential services."[34] These loans could also exceed $5 million, and could be as large as 50% of a local government's operating budget if the local government lost at least 25% of its tax revenues due to Hurricanes Katrina or Rita. These loans were also ineligible for forgiveness.[35]

FEMA approved 157 SCDLs worth a total of $1.27 billion, and disbursed $1.04 billion. Overall, 53 of the 157 approved loans exceeded $5 million; the average amount disbursed was $6.6 million. Later, FEMA and Congress forgave over 98% of SCDL principal, discussed more below.[36] (See **Table 3** for more details.)

Differences from TCDL Program

Differences between the SCDL and TCDL programs appeared in both statute and regulation.[37] Statutorily, SCDLs differed from TCDLs primarily as follows:

- SCDLs were not subject to the traditional $5 million loan cap;
- SCDLs could equal up to 50% of a local government's budget in certain cases, rather than 25%; and
- SCDLs were ineligible for forgiveness.

Although statute designated SCDLs to cover only "essential services" rather than "government functions of a municipal character," like traditional CDLs, the difference meant little in practice. FEMA issued new regulations for SCDLs, although they were largely identical to TCDL regulations.[38] The SCDL regulations did not restrict use of the loans beyond those uses allowed for TCDLs. There were, however, some minor differences. For example, the regulations discarded the TCDL provision that a local government may only receive one loan per major disaster.[39]

[32] Sen. David B. Vitter, Senate debate, *Congressional Record*, vol. 151, part 17 (October 7, 2005), p. S11282.

[33] The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

[34] 120 Stat. 459.

[35] 120 Stat. 459-460.

[36] Data provided by FEMA to CRS.

[37] FEMA issued interim and final rules for the SCDL program. See Department of Homeland Security, Federal Emergency Management Agency, "Special Community Disaster Loans Program," 70 *Federal Register* 60444, October 18, 2005; and Department of Homeland Security, Federal Emergency Management Agency, "Special Community Disaster Loans Program," 75 *Federal Register* 2800-2820, January 19, 2010.

[38] The most significant differences covered loan forgiveness procedures (Congress approved SCDL forgiveness in 2007 in P.L. 110-28), discussed in the following sections.

[39] Found in the difference between 44 C.F.R. §206.361(d) and 44 C.F.R. §206.371(d).

Debate over Prohibiting SCDL Forgiveness

The prohibition on SCDL forgiveness was met with some controversy. In debate, then-Senator Carl Levin (Michigan) questioned why Congress might change Stafford Act provisions allowing CDL forgiveness after one of the largest disasters in U.S. history.[40] Then-Senator Hillary Rodham Clinton (New York) suggested that requiring local governments to repay SCDLs—never previously asked of local governments receiving CDLs—amounted to treating Gulf Coast residents as "second-class citizens."[41]

Discussions about forgiveness continued in the years following the storms. In an October 2005 hearing, the then-mayor of New Orleans C. Ray Nagin stated that the lack of forgiveness increased the city's debt and hampered its recovery.[42] Some Members of Congress echoed the theme in a January 2007 hearing, with then-Senator Mary Landrieu (Louisiana) calling SCDLs' lack of forgiveness a "double standard."[43]

Legislation Regarding SCDL Forgiveness

Several proposed bills would have revised statute to permit SCDL forgiveness. In October 2005, shortly after SCDLs' creation, Members of Congress introduced two bills that would have allowed SCDL forgiveness in certain circumstances: H.R. 4012, the Community Disaster Loan Equity Act of 2005, and S. 1872, a bill to permit the cancellation of certain loans under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Neither bill passed out of committee. In the 110th Congress, S. 253, the Disaster Loan Fairness Act of 2007, would have similarly created conditions for SCDL forgiveness.

Congress ultimately did make SCDLs eligible for forgiveness. Enacted in May 2007, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28) amended the CDL Act of 2005 by striking the provision forbidding forgiveness.[44] No explanation for the decision to allow forgiveness was given in the bill or the *Congressional Record*. However, a conference report for H.R. 1591—a supplemental appropriations package which President Bush vetoed after the 110th Congress passed the bill, and which contained many of the same policy provisions eventually enacted in P.L. 110-28, including SCDL forgiveness—noted that "restoring FEMA's ability to forgive Community Disaster Loans that were issued in response to Hurricanes Katrina and Rita" was "consistent with previous disasters."[45]

---

[40] Sen. Carl Levin, Senate debate, *Congressional Record*, vol. 151, part 17 (October 7, 2005), p. S22586.

[41] Sen. Hillary Rodham Clinton, Senate debate, *Congressional Record*, vol. 151, part 17 (October 7, 2005), p. S22585.

[42] U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, *A Vision and Strategy for Rebuilding New Orleans*, 109th Cong., 1st sess., October 18, 2005, p. 171.

[43] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Hurricanes Katrina and Rita: Outstanding Need, Slow Progress*, 110th Cong., 1st sess., January 29, 2007, S.Hrg. 110-33, p. 8.

[44] See Sec. 4502.

[45] U.S. Congress, House, *Making Emergency Supplemental Appropriations for the Fiscal Year Ending September 30, 2007, and for Other Purposes*, Conference Report to accompany H.R. 1591, 110th Cong., 1st sess., April 24, 2007, H.Rept. 110-107, p. 215.

SCDL Forgiveness Regulations

FEMA's regulations for SCDL forgiveness generally followed those for TCDLs. However, there were some differences in the SCDL forgiveness process, including:

- altering how property tax revenue loss was calculated, which made additional funds eligible for forgiveness;
- adding new definitions for "revenues" and "operating expenses" for purposes of the forgiveness evaluation;
- clarifying that different FEMA officials would rule on appeals of forgiveness denial than those who made the initial determination;
- providing a 60-day timeline for FEMA to review forgiveness applications; and
- allowing local governments to submit financial data for the three full fiscal years following the disaster or the 36 calendar months following a disaster.[46]

Hurricanes Ike and Gustav: The 2009 CDL Cohort

Hurricanes Ike and Gustav made landfall in Texas and Louisiana in September and October 2008, respectively, straining local government budgets in those states.

Laws passed in 2008 and 2009 expanded CDLs' ability to support the disasters. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329), enacted on September 30, 2008, transferred up to $98.15 million from the DRF to the DADLP for CDLs.[47] The following year, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) permitted CDLs issued for major disasters in 2008 to exceed $5 million. The law further stated that CDLs could equal up to 50% of a local government's operating budget if the local government lost at least 25% of its tax revenues due to the disaster.[48] (This differed from TCDL rules where a 75% loss in a local government's tax and other revenues enables a CDL up to 50% of the operating budget.) FEMA did not produce new regulations for the CDLs authorized by these laws (known as the 2009 cohort).

FEMA approved 24 CDLs totaling just over $60 million for the 2009 CDL cohort (see **Table 3**). Despite Congress allowing loans over $5 million, FEMA did not approve any loans above that amount.[49] The average amount disbursed per loan was $2.2 million. FEMA and Congress forgave only 66.6% of the principal for the 2009 CDL cohort—the lowest amount for any CDL cohort.

Hurricanes Harvey, Irma, and Maria: The 2018-2019 CDL Cohort

The 2017 hurricane season included several significant storms. The federal government declared Hurricane Harvey, which devastated parts of Texas, a major disaster on August 25.[50] Two weeks

[46] Federal Emergency Management Agency, "Special Community Disaster Loans Program," 75 *Federal Register* 2802-2803, January 19, 2010.

[47] 122 Stat. 3592.

[48] 123 Stat. 164.

[49] Data provided by FEMA to CRS.

[50] Texas Comptroller, *A Storm to Remember: Hurricane Harvey and the Texas Economy*, February 2018, https://comptroller.texas.gov/economy/fiscal-notes/2018/special-edition/.

later Hurricane Irma extensively damaged the U.S. Virgin Islands (USVI), Puerto Rico, and parts of Florida.[51] Two weeks after that, Hurricane Maria battered Puerto Rico.[52]

Congress subsequently passed legislation creating the 2018-2019 CDL cohort. Enacted October 26, 2017, Division A of the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (ASA 2017; P.L. 115-72) transferred $4.9 billion from the DRF to the DADLP account for CDLs to "assist local governments in providing essential services as a result of Hurricanes Harvey, Irma, or Maria."[53]

ASA 2017 allowed the loans to exceed $5 million and stipulated that projected tax and other revenue loss for the 180 days following the disaster be used to calculate loan size, rather than projected losses from the fiscal year in which the major disaster happens and the following three fiscal years. Local governments could receive more than one CDL per disaster.[54]

Typically, FEMA dictates CDL terms. However, ASA 2017 stipulated that the Secretary of Homeland Security, "in consultation with the Secretary of the Treasury, shall determine the terms, conditions, eligible uses, and timing and amount" of the 2018-2019 CDLs.[55] Similarly, TCDL forgiveness is usually granted at FEMA's discretion. However, ASA 2017 required that "only ... the Secretary of Homeland Security in consultation with the Secretary of the Treasury" could forgive the 2018-2019 CDLs.[56] No explanation for that decision was given in the bill, the *Congressional Record*, or any committee reports.

Enacted February 9, 2018, Division B of the Bipartisan Budget Act of 2018 (BBA, P.L. 115-123) refined and expanded ASA 2017's CDL provisions. BBA extended the period of projected tax and other revenue loss for calculating the size of the loan to 365 days.[57]

As a condition of receiving the loans, BBA required the Governor of Puerto Rico to submit a report on Puerto Rico's 12- and 24-month economic and disaster recovery plans.[58] The law required the government of Puerto Rico to submit interim status reports every 30 days before submitting the recovery plan reports, and every 180 days to submit a progress report on the goals in its economic and disaster recovery plans.[59] BBA also dictated CDLs over $10 million to territories for recovery from Hurricanes Irma and Maria could be reviewed by a federal oversight board established by the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA, P.L. 114-187).[60]

FEMA approved 98 2018-2019 CDLs for a total of approximately $656 million. As of April 30, 2022, FEMA disbursed about $615 million. (See **Table 3** and **Table 7**.) Four loans—all to entities

---

[51] U.S. Government Accountability Office, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges*, GAO-18-472, September 4, 2018, https://www.gao.gov/products/gao-18-472.

[52] Michon Scott, *Hurricane Maria's Devastation of Puerto Rico*, National Oceanic and Atmospheric Administration, August 1, 2018, https://www.climate.gov/news-features/understanding-climate/hurricane-marias-devastation-puerto-rico.

[53] 131 Stat. 1225.

[54] 131 Stat. 1225.

[55] 131 Stat. 1226.

[56] 131 Stat. 1225.

[57] 132 Stat. 85.

[58] 132 Stat. 108.

[59] 132 Stat. 109.

[60] 132 Stat. 110. For more information on PROMESA, see CRS Report R44532, *The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)*, coordinated by D. Andrew Austin.

in the USVI—were more than $5 million.[61] That included the largest CDL FEMA has approved, a $145 million loan to the government of the USVI. All principal issued for the 2018-2019 CDLs as of April 30, 2022, has been forgiven.[62]

Controversies over the 2018-2019 CDLs

Puerto Rico Cash Balance Requirement

In a January 2018 letter, officials from FEMA and the Department of the Treasury (Treasury) told officials of the government of Puerto Rico that the federal government was withholding disbursal of approved CDLs because Puerto Rico held a central cash balance that "consistently exceeded $1.5 billion in the months following the hurricanes."[63] The letter said that the federal government would create a cash balance policy to determine when it could disburse the funds, but that the island's 78 *municipios* (the equivalent of a county government) could apply for CDLs independent of the government of Puerto Rico. This was the first time FEMA (or any other agency) tied CDL disbursal to an applicant's cash balance.

Puerto Rico officials objected to the policy. In a February 2018 letter to Congress, the Governor of Puerto Rico wrote that Treasury's policy "effectively requested Puerto Rico to exhaust its own resources before [Treasury] and FEMA would provide access to the CDL program funds."[64]

The government of Puerto Rico and the federal government agreed on a cash balance policy in March 2018. Under the agreement, the government of Puerto Rico could access its CDLs once its cash balances fell below $1.1 billion.[65] Even though only *municipios*—and not the government of Puerto Rico—ended up receiving loans, the negotiations may have contributed to delays disbursing loans to *municipios*. FEMA disbursed the first 2018-2019 CDLs in Puerto Rico on May 8, 2018—over six months after disbursing the first loans to the USVI.

Figure 2 shows the average period from disaster declaration to loan disbursal for the 2018-2019 CDLs. The period was approximately a year longer for Puerto Rico than for the USVI (although not as long as for Texas, which received significantly fewer loans than Puerto Rico).

[61] Data provided by FEMA to CRS.

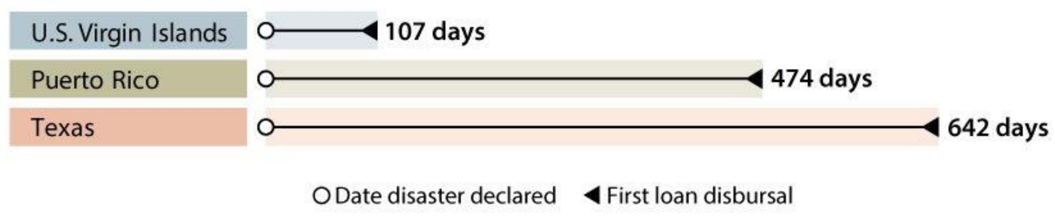
[62] The percentage of principal forgiven is actually 105.9%, reflective of FEMA data.

[63] Letter from Alex Amparo, Assistant Administrator Recovery Directorate, Federal Emergency Management Agency, and Gary Grippo, Deputy Assistant Secretary for Public Finance, U.S. Department of the Treasury, to Mr. Gerardo J. Portela Franco, Executive Director and Chairman of the Board, Fiscal Agency and Financial Advisory Authority, Government of Puerto Rico, January 9, 2018.

[64] Letter from Ricardo Rossello Nevares, Governor of Puerto Rico, to Honorable A. Mitchell McConnell, Honorable Charles E. Schumer, Honorable Paul D. Ryan, and Honorable Nancy Pelosi, February 26, 2018, https://www.puertoricoreport.com/wp-content/uploads/2018/03/RR-CDL-Letter.pdf.

[65] U.S. Department of the Treasury, Statement by a Treasury Spokesperson on the Agreement Reached by Secretary Mnuchin on the Community Disaster Loans for Puerto Rico, March 22, 2018, https://home.treasury.gov/news/press-releases/sm0331.

Figure 2. 2018-2019 CDLs, Average Time Between Disaster Declaration and First Disbursal



Source: Raw data provided by FEMA. Calculations made by CRS.

Notes: Numbers rounded to the nearest whole number.

Table 7 presents the amounts of 2018-2019 CDLs approved and disbursed for Texas, Puerto Rico, and the USVI.

Table 7. 2018-2019 CDL Approvals and Disbursals

State/Territory	Number of Loans Approved	Dollar Amount Approved (millions)	Dollar Amount Disbursed (millions)
Texas	21	$40.6	$12.6
Puerto Rico	73	$306.4	$303.7
USVI	4	$309.5	$298.8

Source: Raw data provided by FEMA. Calculations made by CRS.

Notes: Dollar amounts are rounded to nearest tenth.

USVI Bonds

Treasury and FEMA required USVI to issue bonds backed by the territory's gross receipts tax and rum excise taxes, on which Treasury and FEMA held a senior lien, in order to receive CDLs. The lien allowed the USVI to repay Treasury and FEMA from bond proceeds should the entities receiving CDLs fail to repay.[66]

This was the first time the federal government and a CDL recipient made such an arrangement. At a March 2018 hearing, USVI officials—while expressing their appreciation for the loans—noted their concerns. The officials pointed out that the territory issued the new bonds at a time of fiscal stress, and that FEMA had not asked previous CDL recipients to take similar steps.[67]

Typhoon Yutu: The 2021 CDL Cohort

Typhoon Yutu struck the Commonwealth of the Northern Mariana Islands (CNMI) on October 24, 2018. Over a year later, Yutu's repercussions continued to affect the CNMI's economy and

[66] Virgin Islands Public Finance Authority, "Security of the USVI Community Disaster Loan Agreement With FEMA," December 7, 2017, https://bondlink-cdn.com/2622/CDL_Agreement_with_FEMA.qYoJm3yF.pdf.

[67] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on the Interior, Energy and Environment, *The Historic 2017 Hurricane Season: Impacts on the U.S. Virgin Islands*, 115th Cong., 2nd sess., March 12, 2018, 30-941, p. 6.

finances.[68] The Department of Homeland Security Appropriations Act, 2021 (Division F of the Consolidated Appropriations Act, 2021, P.L. 116-260) stipulated that the President (through FEMA) could approve CDLs for major disasters declared in 2018 up to the last day of the fiscal year that is three fiscal years after the fiscal year in which the disaster occurred.[69] This differed from regular CDL regulations, which require FEMA to approve a loan either in the fiscal year of the disaster or the following fiscal year. (The law passed in December 2020, over two years after Yutu.)

P.L. 116-260 allowed CDLs used for 2018 major disasters to exceed $5 million. It also allowed FEMA to base the loan amount on "the projected loss of tax and other revenues and on projected cash outlays not previously budgeted" for one year following the date of the disaster declaration. This differed from how regulations dictate that FEMA calculate CDL, which is based on projected revenue loss in the fiscal year in which the disaster occurs and the three following fiscal years.

Another provision allowed "cash outlays not previously budgeted" to be included in the loan size calculation. This also differed from the usual way CDL size is calculated, which, in addition to revenue loss, includes unreimbursed disaster-related expenses of a municipal operating character. While FEMA regulations define those expenses, P.L. 116-260 did not clarify the meaning of "cash outlays not previously budgeted," potentially allowing inclusion of a greater amount of expenditures in the calculation of loan size than under normal circumstances.

FEMA approved one CDL in 2021 for $88.7 million—to the CNMI under the provisions of P.L. 116-260. (FEMA made another CDL to the CNMI for Yutu in 2020 for $5 million under normal CDL provisions.) FEMA first disbursed the loan in April 2021; Congress subsequently forgave the entirety of the loan in the September 2021 blanket forgiveness.[70]

Considerations for Congress

Congress has demonstrated interest in amending certain provisions of the CDL program on multiple occasions, and FEMA continues actively disbursing CDLs to local governments experiencing major disasters. Local government officials and some Members of Congress have debated certain questions throughout the life of the program. Given these dynamics, Congress may elect to examine several issues related to the CDL program.

The $5 Million Cap

Some Members of Congress and local government officials have questioned whether $5 million is a sufficient amount for the CDL loan cap.[71]

The Disaster Mitigation Act of 2000 (DMA2K; P.L. 106-390) implemented the $5 million cap, which has not been adjusted since the law's passage in October 2000.[72] Using the consumer price

[68] U.S. Government Accountability Office, *Commonwealth of the Northern Mariana Islands, Recent Economic and Workforce Trends*, GAO-20-305, February 2020, p. 11, https://www.gao.gov/products/gao-20-305.

[69] 134 Stat. 1465.

[70] Data provided by FEMA to CRS.

[71] For an example of this discussion, see U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, *U.S. Mayors Speak Out: Addressing Disasters in Cities*, 111th Cong., 1st sess., March 4, 2010, 55-274 (Washington: GPO, 2010), p. 118.

[72] 114 Stat. 1571.

index, a common measure of inflation, $5 million in October 2000 was equivalent to approximately $8.5 million in August 2022.[73]

Several bills have attempted to remove the loan cap. In the 107th Congress, some Members introduced versions of the Community Disaster Loan Equity Act of 2002 in both the House and Senate (H.R. 5523 and S. 3055, respectively). The bills would have eliminated CDLs' $5 million cap. In the 110th Congress, the Whatever It Takes to Rebuild Act (H.R. 6750) would have also repealed the $5 million cap. In introducing the legislation, the bill's sponsor noted, "the $5 million cap does not allow for adequate assistance for medium or large communities."[74]

Congress may assess whether the $5 million cap for CDLs remains appropriate. If Congress wanted to, it could tie the cap to some measure of inflation. Alternatively, Congress could set thresholds that might automatically raise or suspend the cap in certain instances, such as a disaster that causes a local government to lose a certain percentage of revenue or causes a certain amount of damage. Congress may also want to consider potential risks of raising the $5 million cap. That could include fiscal exposure should a financially struggling local government not repay the loan (and not receive loan forgiveness), and the potential increase in federal expenditures that may come with higher loan amounts, especially if the loans ultimately receive forgiveness.

Use of CDL Funds

Local governments generally apply for and use CDLs following "traditional" disasters that produce physical damage. For example, the five major disasters that resulted in the most approved CDLs were all hurricanes or floods.

Congress may decide to consider if local governments should use CDLs more often for "non-traditional" disasters, and whether that might mean directing FEMA to approve CDLs in such instances. For example, the Coronavirus Disease 2019 (COVID-19) pandemic caused revenue in many local governments to decline sharply in the first few months of the pandemic.[75] Despite this, and despite every state receiving a major disaster declaration for the pandemic, no local governments received a CDL due to COVID-19 economic impacts.[76]

One reason for this may have been that local governments were unaware that they could apply for CDLs for public health emergencies or did not have a history of doing so. Congress could direct FEMA to publicize that local governments may use CDLs in such scenarios. Given the unpredictability of local government finances during the pandemic, it may also have been difficult to project revenue losses three fiscal years ahead, as is required in calculating CDL size. Congress may consider whether, in certain situations, projected revenue loss might be limited to the fiscal year in which the disaster occurred or the following fiscal year, which would likely be easier to forecast. Congress did this with the 2021 CDL cohort (for the CNMI.)

Local governments may also have hesitated to use CDLs for pandemic relief to avoid potential duplication of benefits. The Stafford Act prohibits its financial assistance recipients from using

[73] U.S. Bureau of Labor Statistics, *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm.

[74] Rep. Carolyn Maloney, "Introduction of the 'Whatever It Takes to Rebuild Act of 2008,'" *Congressional Record*, vol. 155, part 31 (February 23, 2009), p. E299.

[75] Louise Sheiner and Sophia Campbell, *How Much Is COVID-19 Hurting State and Local Revenues?* The Brookings Institution, September 24, 2020, https://www.brookings.edu/blog/up-front/2020/09/24/how-much-is-covid-19-hurting-state-and-local-revenues/.

[76] Federal Emergency Management Agency, *COVID-19 Disaster Declarations*, https://www.fema.gov/disaster/coronavirus/disaster-declarations.

that money on purposes for which recipients have also received other federal funding.[77] Congress approved significant amounts of financial assistance to local governments during the pandemic in laws such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Further clarity on how local governments may or may not use CDL funds in combination with other sources of potential future federal financial assistance may be useful.

Events that do not result in a major disaster declaration can still harm local governments' finances and impair their ability to perform municipal functions. In recent years, hackers have targeted local governments with "ransomware" attacks, taking control of local government IT systems and withholding them until the local government pays a ransom. For example, a 2019 attack on the City of Baltimore cost the city an estimated $18 million or more.[78] However, according to FEMA's records, there have been no major disaster declarations for cyberattacks, rendering those events ineligible for CDLs.[79]

Congress may wish to consider whether to allow FEMA to approve CDLs for events that hurt local government finances but lack a major disaster declaration. Congress could attach conditions to such situations, such as requiring an event to affect a certain percentage of a local government's revenues in order for it to be eligible for a CDL without a major disaster declaration.

Forgiveness Policy and the Cost of Disaster Assistance

Should Congress consider either expanding the types of situations in which CDLs may be used or changing CDLs' $5 million cap, it may want to evaluate if and how those actions, combined with CDLs' frequent forgiveness, impact the total cost of federal disaster assistance.

Congress has periodically discussed the cost of federal disaster assistance. For example, one of DMA2K's stated goals was to reduce the federal government's disaster assistance costs.[80] Documents from a 2005 hearing indicate that Congress put CDLs' $5 million cap in place due to concerns that CDLs' frequent forgiveness made the program too expensive.[81]

The occasions when Congress has lifted CDLs' $5 million cap resulted in numerous loans larger than $5 million. For example, the average SCDL (made after Hurricanes Katrina and Rita) was $6.6 million. FEMA then forgave 98.6% of all SCDLs. Should Congress consider action that may increase the cost of the CDL program and should FEMA continue to offer CDL forgiveness at the rates is has, this may impact the federal government's disaster assistance costs. This may be particularly relevant since, as **Figure 3** shows, the average annual number of billion-dollar disasters (disasters causing at least $1 billion in damage) has steadily increased.

---

[77] 42 U.S.C. §5155.

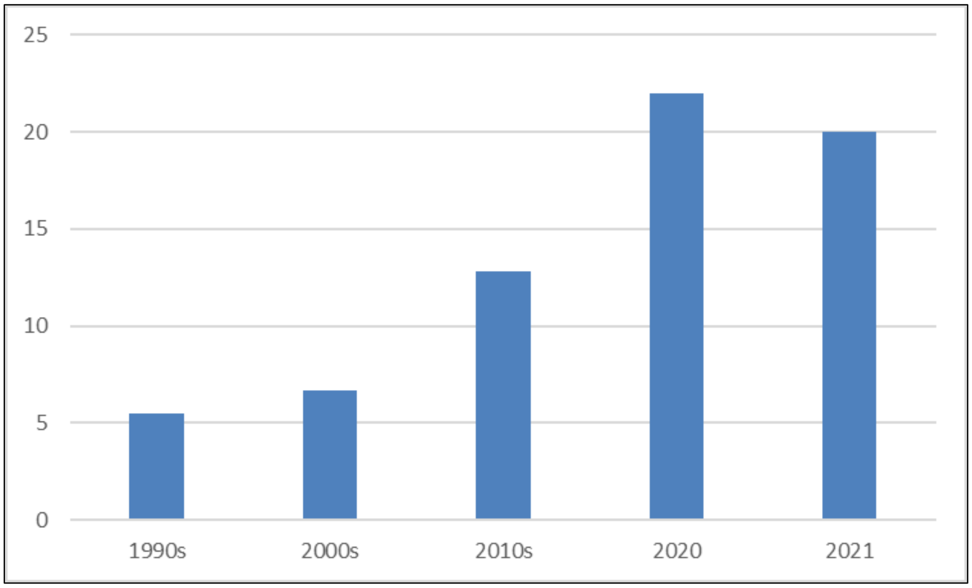
[78] Department of Legislative Services, Maryland General Assembly, "Fiscal and Policy Note, HB 635," February 16, 2020, https://mgaleg.maryland.gov/2020RS/fnotes/bil_0005/hb0635.pdf.

[79] FEMA, *Declared Disasters*, https://www.fema.gov/disaster/declarations.

[80] U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Mitigation and Cost Reduction Act of 1999*, Report to accompany H.R. 707, 106th Cong., 1st sess., March 3, 1999, H.Rept. 106-40, p. 2.

[81] U.S. Congress, House Committee on Government Reform, *Back to the Drawing Board: A First Look at Lessons Learned from Katrina*, 109th Cong., 1st sess., September 15, 2005, H401-13 (Washington: GPO, 2006), p. 54.

Figure 3. Average Annual Billion-Dollar Disasters



Source: National Centers for Environmental Information, National Oceanic and Atmospheric Administration, Billion-Dollar Weather and Climate Disasters, https://www.ncei.noaa.gov/access/billions/.

Notes: As of October 11, there were 15 billion-dollar disasters in 2022.

Congress may want to examine CDL forgiveness policy in light of these factors. Congress could make CDL forgiveness more difficult or require repayment of a specified percentage of CDLs. Congress could also do so only for certain situations—for example, if it raises the $5 million cap for a specific disaster. Should Congress pursue such policies, it should be aware that it would be breaking with longstanding practice, and that local governments in some cases may apply for CDLs expecting to receive forgiveness based on precedent.[82]

There may also be unintended consequences of making forgiveness more difficult. For example, defaulting on a loan can have negative repercussions for a local government, including possibly affecting its credit rating and ability to apply for future federal grants. Given that local governments receive CDLs when they are already experiencing fiscal challenges, the risk of default or difficulty making payments on a CDL may be higher than other types of loans. CDLs' frequent forgiveness may help local governments avoid these impacts.

Questions about CDL forgiveness policy may also bring up discussions about the federal government's role in providing disaster assistance. Aspects of DMA2K and ASA 2017 suggest some desire for the federal government to try to control some costs of disaster assistance. However, some Members of Congress have argued that CDLs' primary purpose is to help states and local governments recover from a disaster, with cost as a secondary concern. Arguing for forgiveness for CDLs issued after Hurricane Sandy, members of New Jersey's congressional delegation asserted that, given local governments' challenges recovering from Sandy and COVID-19, "We believe it would be contradictory to the [CDL] program's goals to collect payments from its recipients at a time when localities are most vulnerable to steep revenue

[82] See, for example, Jean Mikle, "FEMA to Toms River: That $5M for Sandy Was a Loan, Not a Grant, and You Owe Us," *Asbury Park Press*, March 31, 2020.

declines."[83] Congress may wish to consider how questions of CDL forgiveness relate to broader questions about federal disaster assistance.

Conversion to Grant Program

Discussions about whether the federal government should provide either loans or grants to disaster-affected local governments date back decades. With regard to CDLs, a 1996 Government Accountability Office report noted that FEMA suggested the possibility of converting these loans to grants, given the small percentage of funds repaid.[84] Talking about the CDL program at a 2010 hearing, FEMA's then-Administrator Craig Fugate noted that:

> I think there is a more fundamental question. In the gravity of the situation and the erosion of the tax base and the likely costs that are going occur, should we be looking at a loan or looking at a grant program?[85]

Converting CDLs to grants would necessarily involve tradeoffs. For instance, with regard to transparency and reporting requirements, federal grant programs generally have more stringent requirements than loan programs. Typically, grant recipients must comply with numerous administrative requirements contained in a legally binding grant agreement, such as maintaining and providing accurate financial records. In administering a grant, federal reviewers may review activities performed with grant funds, approve changes in the grant's scope of work, and assess compliance with reporting requirements. Following the grant award period, recipients must provide all relevant financial documentation, after which the federal agency overseeing the grant reconciles all relevant expenditures and disbursements. Lastly, the federal government audits non-federal entities that expend at least $500,000 of federal grants in one year for that year.[86]

Loans have almost none of the aforementioned requirements. CDL recipients must provide FEMA with revenues and expenditures data to determine eligibility for receiving the loan and forgiveness, but are not required to document use of funds. While grants' reporting and other requirements can help facilitate oversight, they can also mean grant disbursal is slower than for loans. Loans generally have more flexible terms and requirements than grants, in part due to the expectation of repayment.

While converting CDLs to grants could mean reducing certain administrative requirements that loans do have (such as evaluating forgiveness qualifications), overall, there is likely a net gain on the amount of administrative burden on the receiving jurisdiction. However, Congress may want to assess the tradeoffs between the requirements of grants and loans and the administrative impacts on recipients.

Converting the CDL program to a grant program may also risk violating federal grants' non-supplanting rule. This rule states that federal funds can only supplement, rather than replace (or

[83] Letter from Frank Pallone, Jr., Member of Congress; Andy Kim, Member of Congress; and Bill Pascrell, Jr., Member of Congress, et al. to The Honorable David Price, The Honorable Lucille Roybal-Allard, The Honorable Mario Diaz-Balart, and The Honorable Chuck Fleishman, April 30, 2021, https://pallone.house.gov/sites/pallone.house.gov/files/FY22%20CDL_Clawbacks%20Appropriations%20Request%20Letter.pdf.

[84] U.S. Government Accountability Office, *Community Disaster Loans*, RCED-96-148R, June 5, 1996, p. 5, https://www.gao.gov/products/rced-96-148r.

[85] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Ad Hoc Subcommittee on Disaster Recovery, *Five Years Later: Lessons Learned, Progress Made, and Work Remaining From Hurricane Katrina*, 111th Cong., 2nd sess., August 26, 2010, S.Hrg. 111-1007 (Washington: GPO, 2011), p. 42.

[86] For more information on federal grants, see CRS Report R42769, *Federal Grants-in-Aid Administration: A Primer*, by Natalie Keegan.

supplant), state or local funds for a given activity.[87] This may mean that local governments, if they have any funds remaining to pay for their municipal functions, could be prevented from using grant funds for those functions absent a change in law.

Congress may also consider how converting CDLs to grants may relate to questions in "Forgiveness Policy and the Cost of Disaster Assistance" about the responsibility for, cost, and purpose of disaster assistance. Disaster assistance grants place the financial onus for response and recovery on the federal government. In assessing whether this may be its preferred structure for the CDL program, Congress may consider how it wants to divide responsibility for disaster assistance among various levels of government, and how the federal government should balance fiscal concerns with response and recovery concerns. Congress may also determine that the current structure of the CDL program—a loan program with a high rate of forgiveness—meets its desired goals.

Standardized Requirements and Procedures

Not all CDL cohorts have been subject to the same requirements and procedures. SCDLs were initially ineligible for forgiveness. Puerto Rico was required to agree to a deal on its central cash balance for the 2018-2019 CDLs. FEMA and Treasury asked the USVI to issue new bonds to receive those same loans.

These departures from previous policy may raise questions about the equitable application of the CDL program. Congress may wish to consider whether to standardize potential future CDL cohorts. For example, Congress could decide that for any future CDL cohorts, CDL recipients should not be able to access loan funds until certain cash balances fall below certain thresholds. Alternatively, Congress could decide it does not want to add additional conditions to potential CDL cohorts other than what is in the authorizing legislation and include language to that effect. Or, Congress could determine the system is not in need of changing, and take no action.

Whichever option Congress might choose, in doing so it may consider whether all potential future CDL cohorts should be subject to the same requirements and procedures or whether to allow different cohorts to be subject to different requirements and procedures. Congress may also seek to determine how much authority to allow executive branch agencies in creating new requirements and procedures for future CDL cohorts.

Conclusion

The CDL program provides financial assistance to local governments following a major disaster. Although Congress has debated aspects of the program and amended certain loan parameters multiple times, local governments of varying sizes continue to use the program in times of need. As local governments may continue to face increasingly expensive disasters, Congress may wish to consider how the CDL program will serve the future needs of both those local governments and the federal government.

[87] U.S. Department of Justice, Office of Justice Programs, *Grants 101*, https://www.ojp.gov/funding/grants101/definitions.

Author Information

Adam G. Levin
Analyst in Economic Development Policy

Disclaimer