



# FEMA's Disaster Declaration Process: A Primer

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## Summary

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (referred to as the Stafford Act - 42 U.S.C. 5721 et seq.) authorizes the President to issue “major disaster” or “emergency” declarations before or after catastrophes occur. Emergency declarations trigger aid that protects property, public health, and safety and lessens or averts the threat of an incident becoming a catastrophic event. A major disaster declaration, issued after catastrophes occur, constitutes broader authority for federal agencies to provide supplemental assistance to help state and local governments, families and individuals, and certain nonprofit organizations recover from the incident.

The end result of a presidential disaster declaration is well known, if not entirely understood. Various forms of assistance are provided, including aid to families and individuals for uninsured needs and assistance to state and local governments and certain non-profits in rebuilding or replacing damaged infrastructure.

The amount of assistance provided through presidential disaster declarations has exceeded \$140 billion. Often, in recent years, Congress has enacted supplemental appropriations legislation to cover unanticipated costs. While the amounts spent by the federal government on different programs may be reported, and the progress of the recovery can be observed, much less is known about the process that initiates all of this activity. Yet, it is a process that has resulted in an average of more than one disaster declaration a week over the last decade.

The disaster declaration procedure is foremost a process that preserves the discretion of the governor to request assistance and the President to decide to grant, or not to grant, supplemental help. The process employs some measurable criteria in two broad areas: Individual Assistance that aids families and individuals and Public Assistance that is mainly for repairs to infrastructure. The criteria, however, also considers many other factors, in each category of assistance, that help decision makers assess the impact of an event on communities and states.

Under current law, the decision to issue a declaration rests solely with the President. Congress has no formal role, but has taken actions to adjust the terms of the process. For example, P.L. 109-295 established an advocate to help small states with the declaration process. More recently, Congress introduced legislation, H.R. 3377, that would direct FEMA to update some of its criteria for considering Individual Assistance declarations.

Congress continues to examine the process and has received some recommendations for improvements. Given the importance of the decision, and the size of the overall spending involved, hearings have been held to review the declaration process so as to ensure fairness and equity in the process and its results. This report will be updated as warranted by events.

## Contents

Background .....	1
Congress and the Declaration Process .....	3
The Impetus for Reform.....	3
The Skepticism of Reform.....	6
Presidential and Gubernatorial Discretion.....	7
Preliminary Damage Assessments .....	9
Factors Considered for Public Assistance in Major Disaster Declarations .....	11
Estimated Cost of the Assistance .....	11
Localized Impacts .....	12
Insurance Coverage.....	13
Hazard Mitigation .....	13
Recent Multiple Disasters .....	13
Other Federal Programs .....	14
Factors Considered for Individual Assistance in Major Disaster Declarations .....	14
Concentration of Damages .....	15
Trauma .....	15
Special Populations.....	16
Voluntary Agency Assistance .....	16
Insurance Coverage.....	18
Average Amount of Individual Assistance by State.....	18
Congressional Considerations for the Declaration Process.....	19
The Composition of Preliminary Damage Assessment Teams .....	20
Updating and Revising Individual Assistance Averages .....	20
Other Potential Disaster Indicators .....	20
Concluding Observations .....	21

## Tables

Table 1. Types of State-Funded Disaster Assistance.....	17
Table 2. Average Amount of Federal Assistance Per Disaster Based on Size of State, July 1995 - July 1999 .....	19

## Contacts

Author Contact Information .....	22
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## Background

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288) there are two principal forms of presidential action to authorize federal supplemental assistance. Emergency declarations are made to protect property and public health and safety and to lessen or avert the threat of a major disaster or catastrophe.<sup>1</sup> Emergency declarations are often made when a threat is recognized (such as the emergency declarations for Hurricane Katrina which were made prior to landfall) and are intended to supplement and coordinate local and state efforts prior to the event such as evacuations and protection of public assets. In contrast, a major disaster declaration is made as a result of the disaster or catastrophic event and constitutes a broader authority that helps states and local communities, as well as families and individuals, recover from the damage caused by the event.<sup>2</sup> The differences between the two forms of declarations remain an area of study regarding what events may or may not qualify for the respective declarations.<sup>3</sup>

Federal disaster assistance has served as the impetus for many supplemental appropriations bills over the last several decades, and has accounted for presidential declarations in every state and territory.<sup>4</sup> The supplemental funds are placed in the Disaster Relief Fund (DRF) which is a “no-year” fund managed by the Federal Emergency Management Agency (FEMA) and used only for spending related to presidentially declared disasters.

Major disasters can be a dominant story in the mass media that captures attention both for the devastation that results as well as the potential help that is expected. As one observer noted:

Disaster assistance is an almost perfect political currency. It serves humanitarian purposes that only the cynical academic could question. It is largely funded out of supplemental appropriations and thus does not officially add to the budget deficit. It promotes the local economy of the area where the building process occurs.<sup>5</sup>

While disaster assistance may be good “political currency,” a disaster declaration is generally the result of a tragic and devastating incident that disrupts (and sometimes takes) the lives of hundreds or thousands of families and individuals and the communities and states where they reside. The long-term economic and environmental impact of a disaster can be severe. The assistance offered from federal and private sources may or may not be commensurate with the damage inflicted by a natural or man-made event. Following a disaster, years of rebuilding and recovery work may lie ahead for communities and states. It is the declaration process that sets the federal recovery help in motion.

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<sup>1</sup> 42 U.S.C. § 5122.

<sup>2</sup> Ibid.

<sup>3</sup> For additional discussion, see CRS Report RL34724, *Would an Influenza Pandemic Qualify as a Major Disaster Under the Stafford Act?*, by Edward C. Liu.

<sup>4</sup> For more information on disaster supplementals, see CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data*, by Justin Murray and Bruce R. Lindsay. For a map of disaster declarations, see <http://www.bakerprojects.com/fema/Maps/CONUS.pdf>.

<sup>5</sup> Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events*, (Washington, DC: Island Press, 1999), p. 66.

The trigger for federal disaster assistance is contained in a relatively short statutory provision. P.L. 93-288 (the Stafford Act) includes one brief section that establishes the legal requirements for a major disaster declaration:

Section 401. Procedures for Declaration. All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected state. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that the federal assistance is necessary. As a part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under state law and direct execution of the state's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster and shall certify that, for the current disaster, state and local government obligations and expenditures (of which state commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.<sup>6</sup>

The process for an emergency declaration is also contained in the Stafford Act. In part it is similar to a major disaster declaration in finding and process, but the actual authorities are limited. In addition, section (b) provides for a special authority for the President to exercise his discretion for events that have a distinctly federal character:

Sec. 5191. Procedure for declaration. (a) Request and declaration All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation 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. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists. (b) Certain emergencies involving Federal primary responsibility. The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.<sup>7</sup>

The declaration process is elaborated upon in regulations, specifically in Subpart B of Part 206 (44 CFR). While these regulations have been adjusted through the regulatory process during the past three decades, since 1974 the procedures have undergone little significant change. The process itself is representative of the historical progression of federal disaster relief from being of an episodic nature to the current commonplace disaster declaration, now occurring on a weekly basis. The context in which disaster relief has grown has been in keeping with the growth of government and its concerns.

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<sup>6</sup> 42 U.S.C. § 5170.

<sup>7</sup> 42 U.S.C. § 5191.

Federal disaster relief has a long history in the U.S. dating back to the last years of the eighteenth century and arguably provided much of the political genesis for the New Deal social welfare programs (Landis 1999; Landis 1998; Moss 1999). As Michele Landis argues, social and political construction of claimants for relief as helpless victims of external forces beyond their control (“Acts of God”) have exerted an enduring influence on American political discourse, which has manifested itself in heavy reliance on prior political precedents and analogies in constructing responses to current disasters.<sup>8</sup>

Information contained in the Preliminary Damage Assessments (PDAs) and summaries prepared by FEMA regional offices that accompany gubernatorial requests were long considered “pre-decisional and deliberative information” by the executive branch because they are part of the package that is developed and sent to the White House for the President’s review and ultimate decision. These materials have generally not been available under the Freedom of Information Act process.<sup>9</sup> However, during 2008, FEMA began to list on its website the results of the PDAs. While the summaries of FEMA recommendations are still not available, the agreed upon figures from the PDAs are now available to the public for review.<sup>10</sup>

Policy makers have found it difficult to achieve equity in the treatment of disparate natural disaster events. The events can vary widely in their type, scope, duration, and impact. Perhaps the greatest variables are the states they affect. Each state has a different topography, a different history, and different capacities to respond and recover based on their own authorities, resources, and choices in what they will do following a disaster. Given those variations, it is a daunting task to construct a uniform process that can account for the range of natural and governmental circumstances that are a part of the nation’s potential disaster landscape.

## Congress and the Declaration Process

### The Impetus for Reform

The question of how the federal disaster declaration process should work has come to the attention of Congress from time to time. Congress has requested reports from its investigative arms and investigated the process in panels that have considered aspects of the disaster relief process.<sup>11</sup> Various administrations have also considered the process and FEMA’s role in it.

In 1981, and again in 2001, GAO issued reports on the declaration process that questioned the quality and consistency of FEMA’s assessment criteria as well as the agency’s ability to produce valid recommendations to the President on a governor’s request for supplemental aid. As the most recent report (2001) concluded:

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<sup>8</sup> Michael J. Trebilcock and Ronald J. Daniels, “Rationales and Instruments for Government Intervention in Natural Disasters” in Ronald J. Daniels, Donald F. Kettl, and Howard Kunreuther, eds., *On Risk and Disaster: Lessons from Hurricane Katrina*, (Philadelphia: University of Pennsylvania Press, 2006), p. 104. For additional discussion of the evolution of emergency management see Claire B. Rubin, ed. *Emergency Management: The American Experience 1900-2005* (Fairfax, VA: Public Entity Risk Institute, 2007).

<sup>9</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, Annual Report of FOIA Activity for FY2000, II. C., at <http://www.fema.gov/doc/help/foiareportfy00.doc>.

<sup>10</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Preliminary Damage Assessment Reports*, at <http://www.fema.gov/rebuild/recover/pda-reports.shtml>.

<sup>11</sup> *Ibid.*; and Platt, p. 266.

These criteria are not necessarily indicative of a state's ability to pay for the damage because they do not consider the substantial differences in states' financial capacities to respond when disasters occur. As a result, federal funds may be provided for some disasters when they are not needed – a result that would be inconsistent with the Stafford Act's intent.<sup>12</sup>

Congressional interest in the declaration process derived, in part, from the increased cost in emergency spending—a recurring subject for the appropriations committees when considering supplemental spending legislation.<sup>13</sup> One review of disaster funding, particularly supplemental appropriations, found that the great majority of Disaster Relief Fund spending is related to the large, catastrophic events that meet the criteria established in the Stafford Act. These supplementals have been “driven” by the urgency of large natural disasters. As one witness explained in congressional testimony:

Since funds provided in annual appropriations measures may be used to cover the federal costs of less catastrophic major disasters, Congress has focused critical attention on “must pass” legislation that would replenish the Disaster Relief Fund for the worst and most costly disasters.<sup>14</sup>

A review of data for a seven-year period from 1988 to 1995 reveals that large expenditures, as funded by supplemental bills, relate to declarations issued for the largest events.<sup>15</sup> During this time period, disaster declarations were made for Hurricane Hugo, the Loma Prieta earthquake, Hurricane Andrew, the Midwest floods of 1993, and the Northridge earthquake. However, these were not the only events deemed worthy of presidential action and of cost to the federal treasury. As summarized by one author:

But like the tail of a comet, over 200 other declarations accounted for one quarter of such outlays, many of them of relatively minute cost and extent. While of lesser impact on the national treasury, such “low end” declarations have become, to some observers, new sources of federal spending at the local level, long referred to in other contexts as “pork barrel spending.”<sup>16</sup>

During early 2001, the term “entitlement” was beginning to be used in describing federal disaster spending by the new Bush Administration. Underlining this thinking in his first appearance before the Senate Appropriations Committee, FEMA Director Joe M. Allbaugh explained:

FEMA is looking at ways to develop a meaningful and objective criteria for disaster declarations that can be applied consistently. These criteria will not preclude the President's discretion but will help states better understand when they can reasonably turn to the federal

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<sup>12</sup> U.S. Government Accountability Office, *Disaster Assistance: Improvements Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures*, GAO-01-837, August, 2001, p. 2.

<sup>13</sup> For more information on emergency supplemental spending for disasters see CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data*, by Justin Murray and Bruce R. Lindsay.

<sup>14</sup> U.S. Congress, House Committee on the Budget, *Budgetary Treatment of Emergencies*, p. 68, 105<sup>th</sup> Congress, 2<sup>nd</sup> Sess., June 23, 1998 (Washington: GPO, 1998).

<sup>15</sup> For more information, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

<sup>16</sup> *Ibid.*; and Platt, p. 10.

government for assistance and when it would be more appropriate for the state to handle the disaster itself.<sup>17</sup>

During the 110<sup>th</sup> Congress, attention was given to the disaster declaration process and what states and local governments can reasonably expect from that process. During the early spring of 2007, there were tornadoes that had an impact on Arkansas, Alabama and Georgia. The latter two states received disaster declarations while the damage in Arkansas was deemed insufficient to warrant federal assistance. Following these actions, Chairman Bennie Thompson of the House Homeland Security Committee scheduled a hearing to review FEMA's procedures. Representative Thompson set the context as follows:

As Members representing real communities back home, we want to understand just how FEMA makes determinations regarding what is a disaster deserving of attention and when folks have to fend for themselves. Quite simply, we must have a serious discussion on what our expectations are of our federal government and what should remain a state and local responsibility.<sup>18</sup>

In order to examine the process and the financial projections of disaster spending in particular, Congress mandated in P.L. 110-28 that GAO study how FEMA develops its estimates for supplemental funding that may be needed.<sup>19</sup> Report language detailed these instructions for the review:

The Committee continues to be concerned with FEMA's ability to manage resources in a manner that maximizes its ability to effectively and efficiently deal with disasters. One aspect of particular concern is how FEMA makes projections of funding needed in response to any given disaster or to meet future disasters. A recent Government Accountability Office (GAO) report raised concerns about FEMA's ability to manage its day-to-day resources and the lack of information on how FEMA's resources are aligned with its operations. As a follow-up to this report, the Committee requests that within six months of enactment GAO review how FEMA develops its estimates of the funds needed to respond to any given disaster. Such review should include how FEMA makes initial estimates, how FEMA refines those estimates within the first few months of a disaster, and how closely FEMA's estimates predict actual costs. The review should also include additional analysis and recommendations regarding FEMA's ability to manage disaster-related resources in a manner that maximizes effective execution of its mission.<sup>20</sup>

The study parameters mandated by Congress are broader than the declaration process, placing its emphasis on ongoing FEMA spending, including the refinement and revision of early estimates as well as the general management of spending projections for the Disaster Relief Fund (DRF). But it recognizes the importance of the initial estimates in decision-making and that the declaration process represents the fundamental decision to both establish federal participation following a disaster and provides the initial estimated amount of resources needed that informs that decision.

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<sup>17</sup> U.S. Congress, Senate Committee on Appropriations, Subcommittee on VA, HUD and Independent Agencies, *Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for Fiscal Year 2002*, 107<sup>th</sup> Congress, 1<sup>st</sup> sess., p. 252, at <http://www.access.gpo.gov/congress/senate>.

<sup>18</sup> Opening Statement of Rep. Bennie Thompson, in U.S. Congress, House Committee on Homeland Security, *Disaster Declarations, Where is FEMA in a Time of Need?*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., March 15, 2007.

<sup>19</sup> P.L. 110-28, 121 Stat. 155.

<sup>20</sup> U.S. Congress, House Committee on Appropriations, *Making Emergency Supplemental Appropriations for the Fiscal Year ending September 30, 2007 and other purposes, report to accompany H.R. 1591*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., March 20, 2007, H.Rept. 110-60, p. 211.



GAO's eventual report in response to this request suggested that FEMA's estimates for disaster costs have improved but could use additional refinement; for example

some of the factors that can lead to changes in FEMA's cost estimates are beyond its control, such as the discovery of hidden damage. Others are not, such as its management of mission assignments. Sensitivity analyses to identify the marginal effect of key cost drivers could provide FEMA a way to isolate and mitigate the effect of these factors on its early estimates. To better predict applicant costs for the Individual Assistance program, FEMA could substitute or add more geographically specific indicators for its national average.<sup>21</sup>

During the 111<sup>th</sup> Congress, a hearing before the House Homeland Security Committee focusing on FEMA's regional offices also elicited comments regarding the relative speed, and perceived lack of transparency, of the declaration process. The comments came from both a committee member and a state official closely involved in the process.

Ranking Republican Mike D. Rogers of Alabama questioned the timeliness of FEMA's disaster declarations. Declarations that should take a few days often take a month or longer, and a lack of available information on the status of requests only adds to state officials' frustration, said Brock Long, director of Alabama's Emergency Management Agency. "When we make phone calls to the region or to headquarters, a lot of time the answer we get is 'the declaration request is in process' and that's it," Long said.<sup>22</sup>

## The Skepticism of Reform

There have been several proposals to impose more stringent regulations on the declaration process in an attempt to more precisely assess disaster impacts, calculate eligible damage, and incorporate some measure of suffering and loss. Differing perceptions of the declaration process resulted in different reactions to these proposed reforms.

The history of the disaster declaration process is rife with reform efforts that were perceived by some not as reform but as punitive measures directed at certain constituencies. Some of those differing perceptions were held by those closest to the event at the local level that had experienced a disaster. A different perception was also often held by governors that wanted to protect their option to request federal help. These perceptions were also shared, in some instances, by Members of Congress representing affected areas. All elected officials argued, in various forms, that reform should not impede the delivery of needed federal aid.

One example, now in law, of the desire to reform but not obstruct the declaration process is in the Post-Katrina Emergency Management Reform Act of October of 2006. That statute created a new position at FEMA: the Small State and Rural Advocate.<sup>23</sup> One of the principal duties of the advocate is to ensure that the needs of smaller states and rural communities will be "met in the declaration process;" the advocate is also directed to "help small states prepare declaration requests, among other duties."<sup>24</sup>

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<sup>21</sup> Government Accountability Office, *FEMA Disaster Cost Estimates*, Feb. 2008, p. 4.

<sup>22</sup> Matt Korade, "FEMA's Success Hinges on Regional Personnel," *Congressional Quarterly*, March 16, 2010, at <http://homeland.cq.com/hs/display/do?docid=3569657&sourcetype=31>.

<sup>23</sup> P.L. 109-295, 689g, 120 Stat. 1453.

<sup>24</sup> For more information see CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, coordinated by Keith Bea.

Another example was FEMA's response to recommendations from GAO's 1981 report. FEMA drafted regulations in 1986 that would be more certain in their delineation of state requirements prior to a declaration, reduce overall federal contributions, and install a formula to determine whether a state would receive a presidential disaster declaration for repairs to state and local infrastructure (known as "public assistance" in the Stafford Act). As the congressional report on the initiative summarized the FEMA draft:

The proposal would have limited the number of future presidential declarations by establishing a "state deductible" based on a per capita minimum dollar amount adjusted by the ratio of the state/local price index to the national index. Of 111 declarations issued in prior years, 61 would have been ineligible for any public assistance. FEMA also proposed to decrease the federal share for disaster costs from 75 percent to 50 percent and to exclude aid to special districts.<sup>25</sup>

The FEMA proposal of 20 years ago addressed some problems identified by students and critics of the declaration process. However, some Members of Congress viewed this proposal as a means of removing the power of discretion from elected leadership. Rather than apply the empirical solution suggested by FEMA to perceived problems in the declaration process, Congress instead legislated a provision to explicitly forbid the primacy of any "arithmetic formula." In place of agreeing to the regulatory changes in the formula proposed by FEMA and the Administration, Congress added the following section to the Stafford Act:

Limitation on the Use of Sliding Scales. Section 320. No geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.<sup>26</sup>

While enactment of this legislation halted FEMA's efforts, the issue did not disappear. As discussed below, FEMA has since adopted regulations that use, but not "solely", arithmetic formulae in determining need for assistance.

## Presidential and Gubernatorial Discretion

The declaration process contains many factors for consideration and, for all but the most catastrophic events, the process moves at a deliberate speed accumulating information from several sources. While the process is informed by that information and its relationship to potential assistance programs, the information that is gathered at the state and local level does not preclude the exercise of judgment by the governor or the President.

The Stafford Act stipulates several procedural actions a governor must take prior to requesting federal disaster assistance (including the execution within the state of the state emergency plan and an agreement to accept cost-share provisions and related information-sharing). Still, the process leaves broad discretion with the governor if he or she determines that a situation is "beyond the capabilities of the state." The concession that a state can no longer respond on its own is difficult to quantify. It is the governor who makes that assessment, based on his or her knowledge of state resources and capabilities.

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<sup>25</sup> U.S. Congress, House Subcommittee on Investigations and Oversight, *The Federal Emergency Management Agency's Proposed Disaster Relief Regulations*, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1987), pp. 3-5.

<sup>26</sup> 42 U.S.C. 5163.

Actions by a governor are a driving constant in this process. Both declarations of major disaster and declarations of emergency must be triggered by a request to the President from the governor of the affected state.<sup>27</sup> The President cannot issue either an emergency or a major disaster declaration without a gubernatorial request. The only exception to this rule is the authority given to the President to declare an emergency when “he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States can exercise exclusive or preeminent responsibility and authority.”<sup>28</sup>

The importance of governors in the process is not lost on, nor would it likely be diminished by, Presidents who formerly served in that position. Over the last three decades of Stafford Act implementation, four of the Presidents during this period were former governors who had worked through the disaster declaration process from both the state and the federal level.<sup>29</sup>

Having that experience may have left the Presidents, and their staffs and appointees, with an appreciation of the discretionary authority inherent in the process. While there are some established standards in the law, the factors that are to be weighed in considering the impact of a disaster on the need for assistance for families and individuals are general considerations that underscore the judgment required to reach a decision. As one observer noted of the decision for general, flexible considerations:

In other words, Congress likes to keep the process imprecise, even if benefits occasionally go to the undeserving. The absence of objective criteria preserves wide political discretion to the president.<sup>30</sup>

Congress also has among its number former governors who have exercised this discretion at the state level. Still, despite the interest some may have in keeping “the process imprecise,” some Members of Congress express disappointment at times with the exercise of the discretion and the general nature of the considerations. As noted previously in this report, that disappointment has been reflected in hearings that have focused on how the disaster declaration process works in practice.

In the declaration process, FEMA develops a recommendation that is sent to the White House for action. However, as implied, it is a recommendation from FEMA and the Department of Homeland Security (DHS). The final action, as defined in the regulations of the process, is a “Presidential determination.”<sup>31</sup> Just as the governor retains the discretion to request federal assistance regardless of thresholds or indicators, the President retains the discretion to make a decision that may be counter to recommendations he receives.

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<sup>27</sup> For more information, see CRS Report RL33090, *Robert T. Stafford Disaster Relief and Emergency Assistance Act: Legal Requirements for Federal and State Roles in Declarations of an Emergency or a Major Disaster*, by Elizabeth B. Bazan.

<sup>28</sup> 42 U.S.C. §5191.

<sup>29</sup> President Carter (Georgia), President Reagan (California), President Clinton (Arkansas), and President George W. Bush (Texas).

<sup>30</sup> *Ibid.*; and Platt, p. 20.

<sup>31</sup> CFR 44 § 206.38.

## Preliminary Damage Assessments

Although not explicitly mentioned in the Stafford Act, Preliminary Damage Assessments (PDAs) are a crucial part of the process of determining if an event may be declared a major disaster by the President. The minimal discussion of PDAs in the public record stands in inverse proportion to their impact on disaster decisions and subsequent expenditures from the Disaster Relief Fund (DRF).

When a PDA is conducted after an event it is the “mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole.”<sup>32</sup> The most “preliminary” part of a PDA may be an abbreviated one completed only by the state to determine if the situation merits development of a complete PDA with federal participation. Based on their previous experience, states may determine that the event will not reach the level where a federal disaster declaration is likely. However, despite findings that federal aid may not be needed, there may be political considerations that could lead to a gubernatorial request. As one author points out in his study of the process:

Governors also feel the heat of media coverage of incidents in their states, and they too appreciate the importance of exhibiting political responsiveness. Governors also appreciate that their future political fortunes may be influenced by how they handle their disaster and emergency incidents. As a consequence, the hypothesis assumes that governors are the pivotal and decisive players in securing presidential disaster declarations and that they have a tendency to request declarations for even marginal events.<sup>33</sup>

While media and political pressure may have some influence on the outcome of some requests, governors may exercise caution since they are reluctant to be turned down when requesting aid. A denial of their request could be perceived by some to reflect adversely on their decision-making skills and judgment under pressure. Unlike the procedures of the federal process, a governor's decision to request a declaration is a public and often newsworthy action.

Regardless of any question regarding motivation, the governor's first decision is whether the incident is severe enough to assemble a traditional PDA team to survey the damaged area. The traditional PDA team includes a state official, representatives from the appropriate FEMA regional office, a local official familiar with the area and, in some instances, representatives from the American Red Cross and/or the Small Business Administration. The FEMA representatives have the responsibility of briefing the team on the factors to be considered, the information that will be helpful in the assessment and how the information should be reported. One significant improvement in this process is that the regulations now require that the participants reconcile any differences in their findings.<sup>34</sup>

Another factor is the quality of the PDA team and its findings. PDAs are ordered up quickly after an event. FEMA's 10 regional offices are often engaged in multiple disasters and have to rely on temporary employees (albeit, usually experienced ones) to staff the PDA team.<sup>35</sup> Also, given the

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<sup>32</sup> CFR 44 § 206.33.

<sup>33</sup> Richard Sylves, Quick Response Report #86: *The Politics and Administration of Presidential Disaster Declarations: The California Floods of Winter 1995*, at <http://www.colorado.edu/hazards/research/qr/qr86.html>.

<sup>34</sup> 44 CFR §206.33(c).

<sup>35</sup> FEMA has 10 regional offices: Region 1 (Boston, MA), Region 2 (New York, NY), Region 3 (Philadelphia, PA), (continued...)

variables among regions in interpreting policy and guidance, consistency of approach may also be a question. This became a significant issue during the hurricane season of 2004 in Florida, where questions were raised regarding the designations of some counties.<sup>36</sup>

When working openly and with federal and state cooperation, the PDA can be an effective and inclusive process. As Washington State Emergency Management Director Jim Mullen, and FEMA Region X Director Susan Reinertson, explained the process for a survey of flood damage in November of 2006:

‘Joint PDA teams will visit and inspect damaged areas, document damage and talk, as needed, with homeowners and local officials,’ said Mullen. ‘It’s a partnership effort designed to provide a clear picture of the extent and locations of damage in counties that have reported the most substantial damage to primary homes and businesses.’

‘The PDA teams look at the total scope of damage to establish if recovery is beyond the capabilities and resources of the state and local governments. The PDA doesn’t determine the total cost of recovery, nor does it guarantee a presidential declaration for individual assistance,’ said FEMA Regional Director Susan Reinertson.<sup>37</sup>

PDA teams often face challenges in the collection of data. Some information may be observable in a survey of the area, such as the number of bridges damaged or the number of culverts washed out. But other necessary information, such as the percentage of elderly residents in an area, or the amount of insurance coverage for all homeowners or renters may be more difficult to obtain. Also the geographic span of the damage can create complications as the PDA team struggles to cover all of the affected area in a limited time. Further complications may then ensue based on how much of the area that the PDA teams have visited (generally counties) are included in the governor’s request.

While PDAs are the usual way damages are assessed, there are exceptions to this rule. Some incidents are so massive in their scale and impact that the actual declaration is not in doubt. This would include events such as Hurricanes Andrew and Katrina, the Loma Prieta and Northridge earthquakes, the Mount St. Helens volcanic eruption, and the September 11 terrorist attacks. In these instances, the decision is not whether a declaration will be made, but how broad the coverage will be, both geographic and programmatic. In such cases the President, in accordance with the regulations, can waive the PDA requirement. But as the regulations note, a PDA may still be needed “to determine unmet needs for managerial response purposes.”<sup>38</sup> This means the PDA helps to identify a specific, potential need for certain programs, such as crisis counseling or disaster unemployment assistance during the disaster recovery period. It is this identification of discrete need that helps the governor decide on which assistance programs will be requested.

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(...continued)

Region 4 (Atlanta, GA), Region 5 (Chicago, IL), Region 6 (Denton, TX), Region 7 (Kansas City, MO), Region 8 (Denver, CO), Region 9 (Oakland, CA), and Region 10 (Bothell, WA).

<sup>36</sup> Sally Kestin and Megan O’Matz, “FEMA ruled on disaster before verifying Dade damage,” *South Florida Sun-Sentinel*, at <http://www.sun-sentinel.com/news/sfl-fema15may15,0,6848867.story?coll=sfla-news-utilities>.

<sup>37</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, “Joint State-Federal Preliminary Damage Assessment Teams Visit Flood-Damaged Communities,” Release Number R10-06-047, November 13, 2006, at <http://www.fema.gov/news/newsrelease.fema?id=31509>.

<sup>38</sup> 44 CFR 206.33(d).

The PDA is a “bottom up” process as information gradually rises up for decision-makers to consider. Multiple pressure points, including affected citizens, elected officials, and professionals in various fields, may all urge PDA team members to reach certain conclusions. As one author suggests:

The president, motivated by the need to appear highly politically responsive, solicits and encourages a gubernatorial request for a presidential disaster declaration. Publicity is a factor in that CNN and other news organizations help to promote nationally what would otherwise be a local incident addressed by subnational authorities. The president may also be influenced by the electoral importance of the state that experiences the incident.<sup>39</sup>

It is difficult to overstate the importance of the media context as noted above. Depending on the news of the day, the disaster event in question may be the biggest national story and thus create momentum for action that is difficult to assuage with explanations of traditional administrative procedures.

## Factors Considered for Public Assistance in Major Disaster Declarations

Public Assistance (PA) refers to various categories of assistance to state and local governments and non-profit organizations. Principally, PA covers the repairs or replacement of infrastructure (roads, bridges, public buildings, etc.) but also includes debris removal and emergency protective measures which cover additional costs for local public safety groups incurred by their actions in responding to the disaster.<sup>40</sup> In assessing the degree of PA damage, FEMA considers six general areas:

- Estimated cost of the assistance
- Localized impacts
- Insurance coverage
- Hazard mitigation
- Recent multiple disasters
- Programs of other federal assistance.

### Estimated Cost of the Assistance

Although all of these factors are considered, the *estimated cost of the assistance* is a key component and may be “more equal” than other factors since it contains a threshold figure. What is especially noteworthy about the cost estimates is that they could be interpreted as an example of the “arithmetic formula” that was precluded from use in Section 320 of the Stafford Act. However, that section does state that a formula cannot be “solely” determinative of the fate of a

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<sup>39</sup> Ibid.; and Sylves, p. 5.

<sup>40</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Presidential Declarations: What Does This Mean for Me?*, at <http://www.fema.gov/media/archives/2007/010807b.shtm>.

governor's request. Use of the other factors listed arguably justifies FEMA's consideration of the threshold figure of \$1 million in PA damage—the first number FEMA expects to see in a request that includes PA as an area of needed assistance. In addition FEMA also considers a state-wide threshold of \$1.30 per capita in estimated eligible disaster costs before it will approve a request for PA help.<sup>41</sup>

Depending on the state's population, the per capita threshold may be difficult to reach. For example, the 2000 Census estimated California's population at just under 34 million people.<sup>42</sup> Applying the \$1.30 per capita figure, it would require eligible PA damage in California to be close to \$41.5 million. California is a large state with a budget and tax base commensurate with its size. Expecting a large state to be able to respond on its own is equating such help, and such amounts, to be within "the capabilities of the state."<sup>43</sup>

Compare that level of eligible damage for California (\$41.5 million) with Nevada, a small population state according to FEMA regulations.<sup>44</sup> For Nevada, with a population of just under 2 million people according to the 2000 Census, eligible PA damage of about \$2.4 million would make the state potentially eligible for supplemental federal assistance.

There are obvious differences in the populations of these two states; however, both have substantial industries and are growing areas. They are bordering states that are both subject to the threat of earthquake damage.<sup>45</sup> Different measurements have been suggested to try to more accurately capture a state's capacity to respond to disaster events. Some of these measurements are discussed in the "Congressional Considerations for the Declaration Process" section of this report.

## Localized Impacts

The next factor used by FEMA to consider a declaration that may include PA help focuses on *localized impacts*. FEMA generally looks for a minimum of \$3.27 per capita in infrastructure damage in a county before designating it for PA funding.<sup>46</sup> While such a per capita amount would likely ensure that the local entity (almost always a county) would be included in the list of jurisdictions designated for PA assistance should a declaration be issued, high local levels of damage per capita would not supersede a finding that damages state-wide fell below the state-wide threshold amount. However, knowledge of a very large localized impact could weigh on the President's discretion and raise the importance of the *localized impact* factor.

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<sup>41</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, "Notice of Adjustment of Statewide Per Capita Impact Indicator," 75 *Federal Register*, 62135, October 7, 2010.

<sup>42</sup> U.S. Census Bureau, *State & County Quick Facts*, at <http://quickfacts.census.gov/gfd/states/06000.html>.

<sup>43</sup> 42 U.S.C. §5170.

<sup>44</sup> 44 CFR § 206.48.

<sup>45</sup> U.S. Geological Survey, Earthquake Hazards Program, "Earthquake Density Maps for the United States", at [http://earthquake.usgs.gov/regional/states/us\\_density.php](http://earthquake.usgs.gov/regional/states/us_density.php).

<sup>46</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, "Notice of Adjustment of Countywide Per Capita Impact Indicator," 75 *Federal Register*, 62135, October 7, 2010.

## Insurance Coverage

*Insurance coverage* also is considered in assessing damage. Officials preparing PA estimates deduct the amount of insurance that should have been held by units of governments and non-profit organizations from the total eligible damage amount. However, this is a complicated assessment with several caveats. A considerable number of states and local governments “self-insure” their investments against some types of disasters and may argue that they would have total liability absent a federal disaster declaration.<sup>47</sup> Also, in the event of some disasters (earthquakes being a prime example), the state insurance commissioner must certify that hazard insurance is both available and affordable. If it is not available, deducting an amount of coverage not realistically available would not be a practical consideration.<sup>48</sup>

In the case of a flood event, it is much simpler for FEMA to access information available on whether flood insurance was available, given that FEMA administers the National Flood Insurance Program (NFIP) and there are program staff in each FEMA region who monitor NFIP participation. This knowledge of flood insurance availability and costs makes it a simpler process for FEMA to deduct the amount of flood insurance that should have been in place from the total potential award for a public structure.<sup>49</sup>

## Hazard Mitigation

*Hazard mitigation* presents a challenging and different type of consideration for Public Assistance disaster declaration requests. If the requesting state can prove that their per capita amount of infrastructure damage falls short due to mitigation measures that lessened the disaster's impact, FEMA will consider that favorably in its recommendation to the President. Calculations of savings would be dependant on cost-benefit analysis and other related estimates of damages that were avoided. This factor is intended to encourage mitigation projects by states to lessen the risks of future natural disasters. Some might consider this practice to be one where “a good deed *should* go unpunished.” However, another factor to be considered is that the mitigation work that is credited to the state may, in fact, have been principally financed (up to 75% of the costs) with previous FEMA disaster assistance funding through the Hazard Mitigation Grant Program (HMGP).<sup>50</sup>

## Recent Multiple Disasters

*Recent multiple disasters* is the factor FEMA considers when a state has been repeatedly hit by disaster events (either presidential declarations or events within the state that were not declared) within the previous 12 months. FEMA evaluates the amount of funds that the state has committed to these recent events and their impact on the state and its residents. For example, a request from a state that has responded on its own to a series of tornadoes may receive a more favorable consideration, even if the catalyst for the request was arguably not as destructive as others. This

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<sup>47</sup> For information on public insurance coverage, see “Cost of Risk Survey” conducted by the Public Entity Risk Institute (PERI) at <http://www.riskinstitute.org>.

<sup>48</sup> 44 CFR §206.253. For additional information, see CRS Report RS22945, *Flood Insurance Requirements for Stafford Act Assistance*, by Edward C. Liu.

<sup>49</sup> 44 CFR §206.252.

<sup>50</sup> 42 U.S.C. § 5170c.



factor was used recently in FEMA's assessment of the multiple hurricanes that struck Florida during the 2004 hurricane season.

## Other Federal Programs

When FEMA is reviewing a governor's request it is also considering whether *other federal programs* are available. One example might be if a large amount of the reported damage occurred to federal-aid-system roads. The Federal Highway Administration (FHWA) is a more appropriate agency to handle such an event, and administers programs that address this specific type of damage.<sup>51</sup> The bridge collapse in Minnesota in August of 2007 was a dramatic example of this type of event that would warrant significant, non-FEMA, federal aid. Similarly, other federal programs may be more responsive to certain types of natural events and the problems they create. For example, oceanic bacteria could cause harmful failures for the fishing and hatcheries industry. Should such outbreaks occur, the Magnuson-Stevens Fisheries Act (P.L. 94-265) authorizes programs under the Commerce Department that would have more appropriate forms of emergency assistance for commercial fishermen than FEMA through the Stafford Act.<sup>52</sup> Also, while drought is a type of disaster that could result in a major disaster, such catastrophes usually result in program assistance from the U.S. Department of Agriculture rather than presidential declarations.<sup>53</sup>

In summary, all of these factors are used by FEMA to determine whether a major disaster declaration will be recommended and whether PA aid will be extended as a part of that potential declaration. FEMA's assistance to a homeowner who chooses not to purchase insurance is left with help from FEMA that is capped at \$28,200. The assistance to repair public infrastructure is based on the amount of eligible damage caused by the disaster event. There is no cap, and the sums can be in the billions of dollars.

## Factors Considered for Individual Assistance in Major Disaster Declarations

Individual Assistance (IA) includes various forms of help for families and individuals following a disaster event. The assistance authorized by the Stafford Act can include housing assistance, disaster unemployment assistance, crisis counseling and other programs intended to address the needs of people. In seeking to assess the impact of a disaster on families and individuals, the factors FEMA considers include:

- Concentration of damages
- Trauma
- Special populations

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<sup>51</sup> For more information, see CRS Report RS22268, *Repairing and Reconstructing Disaster-Damaged Roads and Bridges: The Role of Federal-Aid Highway Assistance*, by Robert S. Kirk.

<sup>52</sup> For additional discussion of this law, see CRS Report RL34209, *Commercial Fishery Disaster Assistance*, by Harold F. Upton.

<sup>53</sup> For more information, see CRS Report RS21212, *Agricultural Disaster Assistance*, by Dennis A. Shields and Ralph M. Chite.

- Voluntary agency assistance
- Insurance coverage
- Average amount of Individual Assistance by state.

## Concentration of Damages

*Concentration of damages* looks at the density of the damage in individual communities. FEMA's regulations state that highly concentrated damages "generally indicate a greater need for federal assistance than widespread and scattered damages throughout a state."<sup>54</sup> Concentrated damages are far more visible and may be an indication of significant damage to infrastructure supporting neighborhoods and communities, thereby increasing the needs of individuals and families.

However, the dispersion of damage is not necessarily an indication that individual and family needs are non-existent. Damage in rural states, almost by definition, is far less concentrated and could arguably be more difficult for a PDA team to view and assess. Congress has sought to address this challenge through the creation of the Rural and Small State advocate position at FEMA.<sup>55</sup>

## Trauma

*Trauma* is defined in three ways in FEMA's regulations: the loss of life and injuries, the disruption of normal community functions, and emergency needs that could include an extended loss of power or water.<sup>56</sup>

Despite their prominence and importance to victims, families and communities, the loss of life and injuries have relatively little bearing on a declaration decision, but they would greatly influence media coverage that can influence the decision-making process.

An extreme amount of losses would be traumatic and considered in the evaluation of the governor's request. But the actual help available from FEMA in response to such losses is limited. The Other Needs Assistance (ONA) program, a part of the Individuals and Households Program (IHP), may provide assistance for uninsured funeral expenses and medical help.<sup>57</sup>

As noted, the extreme loss of life or many injuries will likely influence the amount of media coverage for the event. As previously explained in the "Presidential and Gubernatorial Discretion" section of this report, the media coverage can influence not merely the pace of the decision, but the actual decision itself.<sup>58</sup>

The other areas (disruption of functions and loss of utilities) in the trauma rubric can be a point of dispute in declaration decisions. What constitutes a disruption of normal community functions?

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<sup>54</sup> 44 CFR §206.48(b)(1).

<sup>55</sup> P.L. 109-295, §689g, 120 Stat. 1453.

<sup>56</sup> 44 CFR §206.48(b)(2).

<sup>57</sup> 42 U.S.C. § 5174.

<sup>58</sup> Richard Sylves, Quick Response Report #86: *The Politics and Administration of Presidential Disaster Declarations: The California Floods of Winter 1995*, at <http://www.colorado.edu/hazards/research/qr/qr86.html>.

Do road closures that result in the closing of schools equate to a disruption? Another consideration is how long the disruption remains and how, or even if, federal help can alleviate the disruption. Similarly, the emergency needs due to the loss of utilities are defined by the length of time the power or water are not in service. Because characteristics of these factors are not defined in regulations, discretionary judgments are significant aspects of the evaluation of IA needs.

## Special Populations

*Special populations* are considered by FEMA in assessing a request for Individual Assistance. FEMA attempts to ascertain information about the demographics of an area affected by a disaster event. Those demographics include the age and income of residents, the amount of home ownership in an area, the effect on Native American tribal groups, and other related considerations to be taken into account. The knowledge of the demographics within the affected area gives FEMA added information to consider regarding trauma and community disruption. Special populations are a factor in the consideration of a governor's request, but the total number of households affected that would be eligible for Stafford Act programs remains the prime consideration.

## Voluntary Agency Assistance

*Voluntary agency assistance* involves an evaluation of what the volunteer and charitable groups and state and local governments have already done to assist disaster victims as well as the potential help they can offer in the recovery period. FEMA also considers whether state or local programs "can meet the needs of disaster victims."<sup>59</sup> This factor is among the most contentious in the disaster declaration process due to the subjectivity of the assessment.

FEMA's evaluation of local and state capabilities, and the capabilities of the local voluntary community, may vary greatly among catastrophes. There is an expectation that the regional office's relationship and history with the state could provide some of this information. But a cursory look at state programs available to "meet the needs of disaster victims" suggests that few resources are comparable to federal help in intent or in scope. A National Emergency Management Association (NEMA) survey of its members for state-funded disaster assistance showed that relatively few states provide assistance beyond that authorized in the Stafford Act. **Table 1** summarizes data from that survey.

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<sup>59</sup> 44 CFR §206.48 (b) (4).

**Table I. Types of State-Funded Disaster Assistance**

Assistance Provided	Number of States with These Programs
Public Assistance Program	22
Individual Assistance Program	9
Unmet Need Program	1
Other	5

**Source:** NEMA 2010 Biennial Report: Organizations & Funding for State Emergency Management & Homeland Security (Lexington, KY: Council of State Governments) p. 4.

NEMA noted that the “other” category could include a range of programs or funds not necessarily of direct aid to victims, including “local government loans, HAZMAT (hazardous materials) funds, disaster unemployment insurance, and a governor’s contingency fund.”<sup>60</sup> The report does not define these programs any further, but the small numbers of programs directed at IA or unmet needs suggests that FEMA officials evaluate this area carefully given the lack of information regarding available resources for these programs and the extent of their coverage.<sup>61</sup>

In the same vein, attempts to assess the capacity of local voluntary and charitable groups to handle “unmet needs” caused by a disaster can be challenging and problematic. Part of the challenge is discerning the assistance available from the non-profit, voluntary sector, and if that aid meets the needs created by the disaster event. A problematic aspect of the assessment is similar to the “good deeds” concept addressed in the “hazard mitigation” factor in PA. In that instance, the criteria reward the mitigation work that communities and states had undertaken to lessen the impact of a disaster. Similarly, a strong and efficient charitable sector at the local level that is equipped and funded to address the remaining needs could result in a disaster not being declared and federal supplemental funding not being made available.

Arguably, a community does not base all of its preparedness decisions on the potential of FEMA funding in an extraordinary situation. However, it has been argued that some aspects of the FEMA declaration process could be viewed as disincentives for a sound, local capacity to deliver such assistance. One analyst believed that this problem underlines the need for clear criteria for smaller disaster events:

Too low a threshold reinforces the perception that the federal government will always come like the cavalry to rescue states and local governments from their improvident failure to prepare for routine disasters. Lapses in preparedness, response, recovery, and mitigation (to cite the disaster management litany) should not be encouraged by a too readily available bailout by the federal government and taxpayers.<sup>62</sup>

In evaluating the capabilities of local organizations, FEMA seeks to determine the help that actually exists, rather than assistance that might be expected to be in place.

<sup>60</sup> National Emergency Management Association (NEMA) 2006 Biennial Report: Organizations & Funding for State Emergency Management & Homeland Security, (Lexington, KY: Council of State Governments).

<sup>61</sup> For more information on state assistance programs, refer to the following for summary information on state statutory authorities: CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea, L. Cheryl Runyon, and Kae M. Warnock.

<sup>62</sup> *Ibid.*; and Platt, p. 65.

## Insurance Coverage

As noted earlier in the PA section, *insurance coverage* is also an important consideration when FEMA considers a request for Individual Assistance. This is in part derived from the general prohibition in the statute of the duplication of benefits, as follows:

... each federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.<sup>63</sup>

This provision does not necessarily result in delayed assistance. FEMA is able to provide help to individuals and households that have disaster damages but are waiting on insurance or other assistance for help. Those applicants can receive FEMA help as long as they agree to reimburse FEMA when they receive their other assistance. If a disaster occurred where almost all of the damaged dwellings were fully insured for the damage that was sustained, FEMA could conclude that a disaster declaration by the President was not necessary. Among the types of disasters FEMA frequently responds to, tornado disasters particularly reflect this challenge since tornado coverage is a part of most homeowners insurance policies.

Since the NFIP is administered by FEMA, officials can quickly determine the status of flood insurance in communities and the number of policies in place in the affected area. Additionally, knowledge of the income of the area's residents, as suggested in the *special populations* factor, allows the agency to make some projections regarding the likelihood of insurance coverage, particularly special hazard insurance such as flood or earthquake insurance, which are potentially expensive additions to a homeowners policy. As one analyst has noted:

The decision not to buy insurance for earthquakes, floods, hurricanes and other natural disasters isn't always conscious: some homeowners don't realize they're not already covered. But many others, faced with high premiums and policies with limited coverage, gamble that they won't need insurance help to rebuild after a disaster.<sup>64</sup>

## Average Amount of Individual Assistance by State

The last factor FEMA considers in assessing IA needs is the *average amount of Individual Assistance by state*. FEMA has issued statistics on average losses but notes that the average numbers used are not a threshold (see **Table 2**). The agency does suggest that the "following averages may prove useful to states and voluntary agencies as they develop plans and programs to meet the needs of disaster victims." The inference is that the levels listed generally are what would be expected in damage to dwellings.

The average numbers that follow are based on disasters that occurred between July of 1995 and July of 1999; the data are 10 years old and of questionable use today. The chart divides states into three categories: small states (under 2 million in population), medium states (2 to 10 million in

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<sup>63</sup> 42 U.S.C. §5155.

<sup>64</sup> Liz Pulliam Weston, "Do You Really Need Disaster Insurance?," *MSN Money*, at <http://moneycentral.msn.com/content/Insurance/Insureyourhome/P59648.hsp?Printer>.

population) and large states (over 10 million in population). The population amounts are based on the 1990 Census.

**Table 2. Average Amount of Federal Assistance Per Disaster Based on Size of State, July 1995 - July 1999**

Categories	Small States <2 Million Population	Medium States 2-10 Million Population	Large States >10 Million Population
Avg. population (1990 Census Data)	1,000,057	4,713,548	15,552,791
Number of disaster housing applications approved	1,507	2,747	4,679
Number of homes est. major damage/destroyed	173	582	801
Dollar amount of housing assistance	\$2.8 million	\$4.6 million	\$9.5 million
Number of Individual and Family Grants (IFG) approved (Now known as ONA)	495	1,377	2,071
Dollar amount of IFG assistance (now ONA)	\$1.1 million	\$2.9 million	\$4.6 million
Disaster housing/IFG (ONA) combined assistance	\$3.9 million	\$7.5 million	\$ 14.1 million

**Source:** 44 CFR §206.48(b) (6).

While FEMA's regulations stress that these are not thresholds, they are considered by agency officials in determining whether IA will be provided. Presumably states may consider that FEMA help could be forthcoming if damage reaches the state indicator levels. However, since the amounts have not been updated in ten years and are based on a 1990 census, it is difficult to determine the degree to which these numbers are considered. Given Congress's mandate in Section 320 of the Stafford Act, this cannot be an arithmetic formula that solely determines whether assistance is provided. But the presentation of loss indicators may guide states when considering whether to request assistance.

In addition to the issue of the data's currency, a larger and more compelling question is whether the numbers in the chart match up to the Preliminary Damage Assessments (PDAs) for those events. Absent an existing review of detailed information in PDA forms, it is not possible to determine the usefulness of the data in **Table 2**.<sup>65</sup> Still, given the level of experience in this field following literally thousands of disaster declarations over the last 30 years, it could be argued that the numbers of eligible households assisted may be reflective of the estimated damage upon which the decision for a disaster declaration was made.

## Congressional Considerations for the Declaration Process

When Congress considers the mandated GAO reports and other commentary on the declaration process, there are some considerations that Members may wish to review when considering the current declaration process.

<sup>65</sup> This statement remains accurate. However, since FEMA has begun to list PDA information on its website, it should be possible to begin to assess the efficacy of the factors employed to determine IA damage and declaration criteria.

## **The Composition of Preliminary Damage Assessment Teams**

One area of consideration is the composition of Preliminary Damage Assessment teams. Team members are involved throughout the process and include local officials guiding the team, state personnel who assist the governor in requesting assistance, and FEMA staff who work on the disaster if one is declared. While FEMA staff have the opportunity at several levels to refine the information the team gathers on damages and to ask additional questions, the process could be approached in other ways. Some FEMA staff have suggested the formation of several permanent teams that would have PDAs as their prime job task without continuing involvement in particular disasters. This could result in more consistent assessments with the bonus of added perspective of team members with exposure to various disasters in many regions of the country. Establishing independent and expert on-site groups to review a situation is a recommendation that the National Transportation Safety Board (NTSB) has been contemplating in their investigations of transportation accidents.<sup>66</sup>

The PDA is an important part of the declaration process. While it can be subject to challenge, it is also the assessment closest to the event. Given its vital role in the process the PDA deserves close attention to determine if these on-site assessments are accurately reflecting the character of an event and the likely eligible damages following a disaster event.

## **Updating and Revising Individual Assistance Averages**

As previously noted, the averages that appear in FEMA's declaration process regulations for Individual Assistance (IA) to states are derived from experiences from July 1995 to July 1999.<sup>67</sup> These figures could be updated based on FEMA's more recent experience in delivering this type of assistance. Legislation introduced in the 111<sup>th</sup> Congress had a provision that directed FEMA to review the factors that are considered for an IA designation.<sup>68</sup>

While the averages are separated by state population size, there does not appear to be a threshold number equivalent to the PA figure of \$1 million in eligible damage. In the case of IA help, a dollar figure may not be desirable; however, numbers of families and households affected, or a minimum number of homes with major damage, could potentially be a starting point in establishing a base IA threshold for consideration of requests.

## **Other Potential Disaster Indicators**

The current per capita indicator based on state population according to the U.S. Census is clear, but some observers believe it lacks precision. For example, the earlier discussion on PA indicators pointed out the commonality between California and Nevada regarding earthquake risk as well as the growth of the states. Their population sizes are very different but the per capita indicator alone does not necessarily measure a state's fiscal capacity.

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<sup>66</sup> For more information, see CRS Report RL33474, *Reauthorization of the National Transportation Safety Board (NTSB)*, by Bart Elias.

<sup>67</sup> 44 CFR § 206.48.

<sup>68</sup> H.R. 3377, Title III, Sec.304.

The GAO report in 2001 noted that per capita personal income measures do not take into account the taxable income a state may enjoy from businesses or corporations that may have considerable taxable profits. GAO did suggest a different indicator:

We have previously reported that Total Taxable Resources (TTR), a measure developed by the U.S. Department of Treasury, is a better measure of state funding capacity in that it provides a more comprehensive measure of the resources that are potentially subject to state taxation.<sup>69</sup>

FEMA's response to this suggestion questioned whether the use of TTR would be in violation of the legislative prohibition against arithmetic formulas.<sup>70</sup> The TTR does have very specific information and also tracks growth within a state. However, this appears to make it a more accurate measurement. The degree of detail in the measurement would not necessarily make it the "sole" determinant of disaster aid. It could remain an indicator and one among several factors to be considered in the declaration process.

## Concluding Observations

The disaster declaration process, though subject to inquiry, argument, hearings, studies and recommendations, has changed very little over time. It remains a process that can be observed and evaluated as it occurs in the area affected by the disaster, and grows opaque as it moves up through layers of FEMA and DHS management to the White House. By making PDA information available, FEMA has begun to lift the veil on the decisions that are made. Congress has demonstrated an interest in this process and has sought to understand its limits and its effectiveness. "From the Government Accountability Office in 1981 to Vice President Gore's National Performance Review in 1994," one student of the process noted, "countless policy critiques have called for more objective criteria for presidential disaster declarations."<sup>71</sup> But those calls can be muted when a disaster occurs in a particular place that has particular importance to actors in the process, whether in Congress or the executive branch.

While criteria have been established to create a relatively uniform and knowable process, these criteria may not be determinative of the most critical elements considered. An emphasis on victims of unexpected natural disaster events will likely always have a compelling influence on the disaster declaration process. But since disaster relief does have a political element, at many levels, precedent arguably can have value in improving the declaration process so that it can be applied broadly and fairly. But precedent can also be problematic when discussing events of very different size and impact.

During the last Congress, attention was directed to the nature of the disaster declaration process. The 112<sup>th</sup> Congress may choose to consider a broad review of the process that might include the consistency of FEMA's approach across the nation in making damage assessments, other potential indicators of state capabilities and capacities, and the currency of the factors it employs to evaluate those assessments of disaster damage and the state requests on which they are based.

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<sup>69</sup> U.S. Government Accountability Office, *DISASTER ASSISTANCE: Improvement Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures*, GAO-01-837, August 2001, p.11.

<sup>70</sup> *Ibid.*, p. 49.

<sup>71</sup> *Ibid.*; and Platt, p. 285.



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