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

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Summary

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue a major disaster declaration to speed a wide range of federal aid to states determined to be overwhelmed by hurricanes or other catastrophes. Financing for the aid is appropriated to the Disaster Relief Fund (DRF), administered by the Department of Homeland Security (DHS). Funds appropriated to the DRF remain available until expended (a "no-year" account). The Stafford Act authorizes temporary housing, grants for immediate needs of families and individuals, the repair of public infrastructure, emergency communications systems, and other forms of assistance.

Because the Stafford Act provides the President with permanent authority to direct federal aid to stricken states, Congress need not enact new legislation to meet immediate needs. Congress appropriated over $10 billion to the DRF in FY2005, largely in response to the four hurricanes that struck Florida in the fall of 2004. The appropriations legislation for FY2006 includes roughly $2 billion for the DRF in both the House and Senate versions of H.R. 2360 in conference at the time Hurricane Katrina struck. Congress can elect to consider supplemental appropriations should additional money be required to meet the requests for assistance.

This report will be updated as warranted by events.

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

Overview of the Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue major disaster declarations that authorize federal agencies to provide assistance to states overwhelmed by disasters.[1] Through executive orders, the President has delegated to the Federal Emergency Management Agency (FEMA), within the Department of Homeland Security (DHS), responsibility for administering the major provisions of the Stafford Act. Assistance authorized by the statute is available to individuals, families, state and local governments, and certain nonprofit organizations.

Activities undertaken under authority of the Stafford Act are provided through funds appropriated to the Disaster Relief Fund (DRF). Federal assistance supported by DRF money is used by states, localities, and certain non-profit organizations to provide mass care, restore damaged or destroyed facilities, clear debris, and aid individuals and families with uninsured needs, among other activities. In calendar year 2004, President Bush issued 68 major disaster declarations; in calendar year 2005, 32 such declarations have been issued, including those for Florida, Louisiana, and Mississippi for Hurricane Katrina.[2]

Presidential Declarations. Under Stafford Act authority, five types of actions may be taken, summarized as follows.

- **Major disaster.** The President issues a major disaster declaration after receiving a request from the governor of the affected state.[3] Major disaster declarations may be issued after a natural catastrophe

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[1] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. In addition to the assistance authorized by the Stafford Act, a wide range of aid is provided by other federal agencies under general statutory authority.

[2] For a list of major disaster declarations, see U.S. Federal Emergency Management Agency, "Federally Declared Disasters by Calendar Year," at [http://www.fema.gov/library/drcys.shtm], visited Aug. 29, 2005. For information on the assistance provided after four hurricanes struck Florida in 2004, see CRS Report RL32581, *Assistance After Hurricanes and Other Disasters: FY2004 and FY2005 Supplemental Appropriations*, by Keith Bea and Ralph Chite.

[3] For criteria considered in the declaration of a major disaster, see 44 CFR 206.48.

or, "regardless of cause, fire, flood or explosion."[4] A declaration authorizes DHS to administer various federal disaster assistance programs for victims of declared disasters. Each major disaster declaration specifies the type of incident covered, the time period covered, the types of disaster assistance available, the counties affected by the declaration, and the name of the federal coordinating officer.

- **Emergency.** The declaration process for emergencies is similar to that used for major disasters; the President may, however, issue an emergency declaration without a gubernatorial request if primary responsibility rests with the federal government.[5] An emergency declaration may be issued on "any occasion or instance" in which the President determines that federal assistance is required. Under an emergency declaration, the federal government funds and undertakes emergency response activities, debris removal, and individual assistance and housing programs. DRF expenditures for an emergency are limited to $5 million per declaration unless the President determines that there is a continuing need; Congress must be notified if the $5 million ceiling is breached.

- **Fire suppression.** The Secretary of DHS is authorized to provide fire suppression assistance to supplement the resources of communities when fires threaten such destruction as would warrant a major disaster declaration.

- **Defense emergency.** Upon request from the governor of an affected state, the President may authorize the Department of Defense (DOD) to carry out emergency work for a period not to exceed 10 days. DOD emergency work is limited to work essential for the preservation of life and property.

- **Pre-declaration activities.** When a situation threatens human health and safety, and a disaster is imminent but not yet declared, the Secretary of DHS may place agency employees on alert. DHS monitors the status of the situation, communicates with state emergency officials on potential assistance requirements, and deploys teams and resources to maximize the speed and effectiveness of the anticipated federal response and, when

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[4] 42 U.S.C. 5122(2).

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

necessary, performs preparedness and preliminary damage assessment activities.

In considering a gubernatorial request for disaster relief, the President evaluates a number of factors, including the cause of the catastrophe, damages, needs, certification by state officials that state and local governments will comply with cost sharing and other requirements, and official requests for assistance. FEMA has established thresholds which are considered by the President and DHS officials in the process of determining whether a major disaster is to be declared.[6] Neither the Stafford Act nor implementing regulations provide for a congressional role in the declaration process.[7]

Types of Assistance and Eligibility. FEMA has established three major categories of aid under the Stafford Act — individual and household, public, and hazard mitigation assistance. The persons and organizations eligible for assistance authorized by the Stafford Act may be summarized in the following fashion:

- **Individuals and households** — immediate temporary shelter, cash grants (maximum of approximately $25,000, adjusted for inflation) for uninsured emergency personal needs, temporary housing assistance (rental and mortgage payments) generally for 18 months, home repair grants, unemployment assistance due to the disaster, debris removal from private property when deemed in the public interest, emergency food supplies, legal aid for low-income individuals, and crisis counseling;

- **State, tribal, and local governments and certain private nonprofit organizations**[8] — repair, reconstruction, or replacement of infrastructure and recreational facilities; emergency protective measures, emergency communications and transportation systems; and loans to replace lost revenue or meet federal cost-sharing requirements; and,

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[6] One indicator used in determining whether a major disaster declaration will be declared for disasters that occur after Oct. 1, 2004, is whether damages exceed $1.14 per capita in each affected state. See U.S. Department of Homeland Security, Federal Emergency Management Agency, "Notice of Adjustment of Statewide Per Capita Impact Indicator," *Federal Register*, vol. 69, Oct. 19, 2004, p. 61515. Similarly, a "countywide" indicator ($2.84 per capita for disasters that occur after October 1, 2004) is used in determining which local jurisdictions will be included in the major disaster declaration. See See U.S. Department of Homeland Security, Federal Emergency Management Agency, "Notice of Adjustment of Statewide Per Capita Impact Indicator," *Federal Register*, vol. 69, Oct. 19, 2004, p. 61505-61506.

[7] For regulations on the request and declaration process, see 44 CFR §§206.35-206.39.

[8] Eligible private non-profit organizations provide essential services and are open to the general public. Essential services include medical and custodial care, education, water, sewer and electrical systems, homeless shelters, and cultural programs such as those offered by museums.

- **State governments** — hazard mitigation assistance to reduce future disaster losses.

Disaster Relief Funding. Congress appropriates money to the Disaster Relief Fund (DRF) to ensure that the foregoing federal assistance is available to help individuals and communities stricken by severe disasters. Funds appropriated to the DRF remain available until expended.[9]

Appropriations to the DRF generally evoke little controversy. Supplemental appropriations legislation is generally required each fiscal year to meet the urgent needs of particularly catastrophic disasters. Questions have been raised in the past concerning the increased cost of federal disaster assistance authorized by the Stafford Act as the categories of aid and eligibility for federal disaster assistance have expanded.

Congress has previously explored the issue of rising federal disaster assistance costs and reliance upon supplemental appropriations.[10] As shown in **Table 1** below, DRF obligations have increased considerably since 1990 in comparison to those recorded in previous decades.

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[9] Such accounts are referred to as "no-year" accounts. For background on this and other types of federal budget accounts, see CRS Report 98-410 GOV, *Fact Sheet on the Budget Process*, by Bill Henniff, Jr.

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

Table 1. Disaster Relief Fund, FY1974-FY2005

(millions of dollars, 2005 constant dollars)

		Total Appropriations				Outlays	
FY	[a]Request.	Original	Supple-mental	Nominal	Constant	Nominal	Constant
1974	100	200	233	433	1,412	250	816
1975	100	150	50	200	591	206	609
1976	187	187	0	187	517	362	999
1977	100	100	200	300	770	294	754
1978	150	115	300	415	997	461	1,108
1979	200	200	194	394	876	277	616
1980	194	194	870	1,064	2,175	574	1,173
1981	375	358	0	358	668	401	746
1982	400	302	0	302	526	115	201
1983	325	130	0	130	217	202	337
1984	0	0	0	0	0	243	391
1985	100	100	0	100	156	192	299
1986	194	100	250	350	533	335	511
1987	100	120	[b]0	120	178	219	325
1988	125	120	0	[c]120	173	187	269
1989	200	100	[d]1,108	1,208	1,674	140	194
1990	270	98	[e]1,150	1,248	1,668	1,333	1,781
1991	270	0	0	0	0	552	711
1992	[f]184	185	4,136	[g]4,321	5,429	902	1,134
1993	292	292	2,000	[h]2,292	2,816	2,276	2,796
1994	[i]1,154	226	[j]4,709	4,935	5,935	3,743	4,502
1995	320	320	[k]3,275	3,595	4,235	2,116	2,492
1996	320	222	[k]3,275	[k]3,497	4,042	2,233	2,581
1997	320	[l]1,320	[l]3,300	4,620	5,248	2,551	2,898
1998	[m]2,708	320	[n]1,600	1,920	2,155	1,998	2,242
1999	[o]2,566	[p]1,214	[q]1,130	2,344	2,597	3,746	4,149
2000	2,780	[r]2,780	0	2,780	3,019	2,628	2,853
2001	2,909	300	[s, t]	[t]5,890	6,249	3,217	3,413
2002	[u]1,369	664	[v]7,008	[v]12,160	12,677	3,947	4,114
2003	1,843	800	[w]1,426	[w]2,199	2,255	8,541	8,761
2004	1,956	1,800	[x]2,275	[x]2,042	[y]2,068	[y]3,044	[y]3,082
2005	2,151	2,042	[x]8,500	10,542	10,542	[y]3,363	[y]3,363
Total	**24,240**	**16,360**	**48,988**	**72,099**	**84,455**	**50,648**	**60,224**

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

a. Data in the request column generally represent the first budget request submitted by the Administration each year and do not include amended or supplemental requests. Notes in this column provide additional detail.
b. In Feb. 1987, a total of $57.5 million was rescinded and transferred from the DRF to the Emergency Food and Shelter Program account (P.L. 100-6). That amount was returned to the fund the same year in supplemental appropriations legislation enacted in July 1987 (P.L. 100-71).
c. P.L. 100-202, the Continuing Appropriations Act for FY1988, appropriated $120 million for disaster relief. According to FEMA, the original appropriation for that fiscal year was $125 million, but $5 million was transferred to the Department of Labor for "low income agriculture workers."
d. Supplemental funds were included in P.L. 101-100, continuing appropriations legislation enacted after Hurricane Hugo struck in Sept. 1989. According to FEMA, this amount was "referred to as a supplemental but was an increase in the original appropriation during a continuing resolution."
e. P.L. 101-130, enacted after the Loma Prieta earthquake, appropriated $1.1 billion in supplemental funding for FY1990. In addition, $50 million was appropriated in P.L. 101-302, dire emergency supplemental appropriations legislation. **Table 1** does not reflect a $2.5 million transfer from the President's unanticipated needs fund.
f. FY1992 request does not include the budget amendment of $90 million submitted by the Administration.
g. Appropriations for FY1992 included a $943 million dire emergency supplemental in P.L. 102-229, enacted in fall 1991 after Hurricane Bob; $300 million after the Los Angeles riots and flooding in Chicago (spring 1992) in P.L. 102-302; and $2.893 billion in P.L. 102-368 after Hurricanes Andrew and Iniki, Typhoon Omar, and other disasters.
h. Total for FY1993 includes the $2 billion supplemental approved after the Midwest floods in 1993 (P.L. 103-75).
i. The original FY1994 budget request was $292 million. On July 29, 1993, a supplemental request of $862 million was sent by President Clinton to Congress.
j. Supplemental appropriations for FY1994 enacted after the Northridge earthquake struck Los Angeles (P.L. 103-211).
k. Additional supplemental appropriation approved for Northridge earthquake costs (P.L. 104-19) for FY1995, with the same amount ($3.275 billion) reserved for a contingency fund for FY1996. However, $1 billion of the contingency fund was rescinded in FY1996 omnibus appropriations, P.L. 104-134. In the same legislation, another $7 million was also appropriated to other FEMA accounts for costs associated with the bombing of the Alfred P. Murrah federal building in Oklahoma City.
l. The FY1998 budget appendix (p. 1047) noted a transfer of $104 million from the disaster relief fund in FY1996. In the FY1997 appropriations act (P.L. 104-204), $1 billion that had been rescinded in FY1996 (P.L. 104-134) was restored, and $320 million in new funds were appropriated. Supplemental appropriations of $3.3 billion were approved in P.L. 105-18 after flooding in the Dakotas and Minnesota, and after storms in other states were declared major disasters. The legislation specified, however, that of the total, $2.3 billion was to be available in FY1998 only when FEMA submitted a cost control report to Congress. This requirement was met, and the funding was made available in FY1998.
m. The FY1998 request consisted of a $320 million base amount plus $2.388 billion "to address actual and projected requirements from 1997 and prior year declarations." (*Budget Appendix FY1998*, p. 1047). Does not include $50 million requested for the DRF for mitigation activities.
n. Supplemental appropriations legislation (P.L. 105-174) for FY1998, approved for flooding associated with El Niño and other disasters.
o. The FY1999 request consisted of $307.8 million for the DRF and an additional $2.258 billion in contingency funding to be available when designated as an emergency requirement under the Balanced Budget Act of 1985, as amended.
p. The FY1999 omnibus appropriations act (P.L. 105-277, 112 Stat. 2681-579) included $906 million for costs associated with Hurricane Georges, flooding associated with El Niño, and other disasters.
q. Emergency supplemental appropriations for FY1999 (P.L. 106-31) included $900 million for tornado damages as well as $230 million for unmet needs, subject to allocation directions in the conference report (H.Rept. 106-143).
r. FY2000 appropriations act (P.L. 106-74, 113 Stat. 1085) included disaster relief funding as follows: $300 million in regular appropriations and $2.480 billion designated as emergency

spending for costs associated with Hurricane Floyd and other disasters. In addition, the Consolidated Appropriations Act (P.L. 106-113) authorized the Director of FEMA to use up to $215 million in disaster relief funds appropriated in P.L. 106-74 for the purchase of residences flooded by Hurricane Floyd, under specified conditions.

s. Supplemental appropriations legislation (P.L. 106-246) authorized that $77 million from the DRF was to be used for buyout and relocation assistance for victims of Hurricane Floyd. The act also appropriated $500 million in a separate account for claim compensation and administrative costs associated with the Cerro Grande fire that destroyed much of Los Alamos, New Mexico.

t. P.L. 107-38 appropriated $40 billion in response to the terrorist attacks of Sept. 11, 2001. Pursuant to the statute, these funds for FY2001 were allocated by the Office of Management Budget from the Emergency Response Fund (ERF). Of the total appropriated in P.L. 107-38 after the Sept. 11 attacks, $4.4 billion was allocated for FY2001 through P.L. 107-117 (115 Stat. 2338). The total available for obligation for FY2001 ($5.9 billion) taken from FEMA *Justification of Estimates, FY2003*, p. DR-2.

u. Request for FY2002 did not include funding for the Disaster Relief Contingency Fund.

v. Congress appropriated a total of $7.008 billion for FY2002 in P.L. 107-117 and P.L. 107-206 to meet additional needs associated with the terrorist attacks. Total funds available ($12.16 billion) include a transfer from TSA, $1 billion released from the Emergency Contingency Fund, and other sources. See DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2004*, p. DR-2.

w. Includes $442 million in P.L. 108-69 and $938 million in P.L. 108-83 to meet needs associated with tornadoes, winter storms, the recovery of wreckage of the Space Shuttle *Columbia* and other disasters. Also, funds appropriated in these measures and in the FY2004 appropriations act for DHS (P.L. 108-90) have been used for costs associated with Hurricane Isabel. Total of $2.199 billion available taken from DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18.

x. P.L. 108-106, which primarily addressed reconstruction costs in Iraq and Afghanistan, also contained an appropriation of $500 million for needs arising from disasters in fall 2003, including Hurricane Isabel and the California fires. Section 4002 of the act designates the funds an emergency requirement pursuant to the budget resolution adopted by Congress (H.Con.Res. 95), but the Consolidated Appropriations Act for FY2004 (Section 102(a), Division H, P.L. 108-199) rescinded $225 million of the $500 million appropriated in P.L. 108-106. Total of $2.043 billion taken from: DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18. P.L. 108-303, enacted after Hurricanes Charley and Frances struck Florida, appropriated $2 billion to the DRF and gave discretion to DHS to transfer $300 million to the Small Business Administration for disaster loans. P.L. 108-324, Division B of the Military Construction Appropriations Act for FY2005, appropriated an additional $6.5 billion to the DRF.

y. Outlay data and constant dollar calculations based on estimates.

Issues for the 109th Congress

Controlling Federal Expenditures. The increase in federal expenditures since 1990 has been the subject of some debate. A report issued by the Office of Inspector General (OIG) for FEMA concluded that the increase in federal disaster costs since 1989 "is due to a greater number and magnitude of disasters, expansion of the law and eligibility for assistance, and interpretation of the law and regulations."[11] Some contend that other factors, notably political considerations, contribute to the costs of disaster relief as well. The author of one study reportedly analyzed data from the insurance industry, climatic study organizations, and DHS, and concluded that "electoral motivations ... had a dramatic effect on which states

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

were granted disaster declarations."[12] More specifically, and less dramatically, Tarcey reported in a published summary of his work: "The best predictor of a disaster declaration, bar none, is actual need. The question arises in these marginal cases, when it's unclear whether to give or not."[13]

Another perspective on the issue was presented in a study completed by the Government Accountability Office (GAO) that also considered the effects of politics on disaster declarations. After examining presidential declaration data from the perspective of the party affiliation of governors and members of state congressional delegations, the authors concluded that there "were no indications that party affiliation affected White House major disaster declaration decisions."[14] In light of concerns about funding decisions after the hurricanes, and the rising deficit, Members of the 109th Congress may elect to consider means of controlling costs or establishing alternative funding mechanisms.

Long-Term Recovery Policy. The Stafford Act authorizes a variety of assistance for stricken states through the full range of events that precede and result from catastrophes. Specific provisions, and the phases of emergency management to which they pertain, include

- **Preparedness**: funding is provided to help states and communities develop disaster preparedness plans, improve warning systems, and conduct training and exercise activities;[15]

- **Emergency response**: federal resources may be used to provide equipment, supplies, and personnel to support state and local efforts, to coordinate disaster relief operations, and provide essential assistance to meet emergency needs;[16]

- **Recovery**: repair of damaged buildings and infrastructure, debris removal, temporary housing and limited home repairs, and revenue loss loans;[17] and,

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[12] For a summary, see Andrew Reeves, "Plucking Votes from Disasters," *Los Angeles Times*, May 12, 2004, p. A19.

[13] Brian Tarcey, "Flooding the Ballot Box: The Politics of Disaster," *Harvard Magazine*, at [http://www.harvard-magazine.com/on-line/030492.html], visited May 21, 2004.

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

[15] 42 U.S.C. 5131.

[16] 42 U.S.C. 5170a, 5170b. Even before a major disaster declaration is issued, the President is authorized to direct the Secretary of Defense to use departmental resources for emergency work essential for preserving life and property (42 U.S.C. 5170b(c)).

[17] 42 U.S.C. 5172-5186.

- **Hazard mitigation**: financial assistance before and after a major disaster declaration is issued to reduce future disaster losses.[18]

The Stafford Act does not explicitly authorize the President to provide long-term recovery assistance to communities.[19] However, the federal government has occupied the field to some extent. The Secretary of Commerce is authorized to undertake disaster economic recovery activities.[20] The *National Response Plan*, the document that sets forth agency responsibilities when major disaster declarations are issued, includes a "Long-Term Community Recovery and Mitigation Annex." This annex "provides a framework for federal government support to state, regional local, and tribal governments, nongovernmental organizations (NGOs), and the private sector designed to enable community recovery from the long-term consequences" of catastrophes.[21] Congress may be called upon to consider whether the existing statutory authority of the Secretary of Commerce is adequate, and to consider whether the Secretary of DHS may undertake long-term recovery activities as set out in the *National Response Plan*, or to consider other legislative initiatives

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[18] 42 U.SC. 5133 (pre-disaster mitigation); 42 U.S.C. 5170c (post-disaster mitigation).

[19] Title V of P.L. 93-288, the Disaster Relief Act of 1974 (88 Stat. 160-163), authorized the President to provide economic recovery assistance "after the period of emergency aid and replacement of essential facilities and services." Congress never funded this authority, and it was repealed in 1998 amendments (see Sec. 102(c) of P.L. 105-393, 112 Stat. 3617).

[20] 42 U.S.C. 3149(c)(2).

[21] U.S. Department of Homeland Security, *National Response Plan* (Washington: 2004), pp. ESF#14-1 through 14-6.