

Testimony of Mitchell L. Moss, Professor of Urban Policy and Planning

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Madame Chair and Members of the Committee:

My name is Mitchell Moss and I am pleased to be here this afternoon to speak before your subcommittee. I have been on the faculty of New York University for more than 35 years and have done research on the role of federal, state and local governments in planning for and responding to disasters and catastrophes.

Today, I would like to address two points: the changing character of catastrophes in the 21st century and the role of the federal government in providing assistance to assure the recovery from large-scale disasters and catastrophes.

The United States faces substantially different risks today than those we faced when the Stafford Act was signed into law. Globalization links our nation to events and activities thousands of miles away, so that a major financial collapse in Asia could disrupt our own financial markets or a major storm surge overseas could disrupt shipping patterns and the supply of products and goods that we have come to rely on.

Moreover, advances in information technologies have made us much more dependent on advanced computer-based systems, thereby increasing our vulnerability to breakdowns in our energy systems, transportation infrastructure, and communication systems. As more of our public and private life is organized around integrated digital information systems, a small breakdown in one component could have serious and widespread consequences on the entire nation.

Simply put, we need to recognize the changing scale of catastrophes. While we have much experience with natural disasters that generate massive damage on a city or community, we must increasingly consider the catastrophic disasters that threaten our nation's economy and capacity to function. In such cases, the role of the federal government must go far beyond the traditional concept of "supplemental assistance" since the very survival of the nation is at stake. Clearly, we should recognize the increasing possibility of

“catastrophic disasters” and the need for the federal government to take a direct role in providing aid to recover from such events.

The Stafford Act – the federal law governing FEMA and federal disaster response – recognizes only two levels of disaster, “Emergencies,” and “Major Disasters.” “Emergencies” are small-scale events, where federal assistance is required but total federal assistance is capped at \$5 million. “Major Disasters” is a catchall for any larger event, meaning the provisions of law and the restrictions on FEMA’s ability to act within the law are the same for a blizzard in Buffalo declared to be a “major disaster” as they are for a devastating hurricane, earthquake, or terrorist attack.

Following Hurricane Katrina, Congress passed the Post Katrina Emergency Management Reform Act of 2006, recognizing the need for an additional level of response and creating a definition for a “Catastrophic Incident,” that, when declared, will bring additional resources to bare, including “Regional Strike Teams” and a “Surge Capacity Force.” This will help ensure that FEMA has enough resources to adequately respond to a catastrophic event.

Just last year, one of the largest barriers in responding to Hurricane Katrina was eliminated – the designation of an “Incident of National Significance.” A study conducted by the Law School at the University of California, Berkeley. Found that the federal government’s response to Hurricane Katrina was delayed for a full day because the Governor of Louisiana requested support under the “major disaster” provisions of the Stafford Act, while federal agencies were waiting for the declaration of an “Incident of National Significance” by the Secretary of Homeland Security under the National Response Plan. This inherent conflict was removed when the National Response Framework replaced the National Response Plan last year, and the concept of an “Incident of National Significance” was eliminated, thereby allowing FEMA to quickly respond to a catastrophic disaster.

However, despite these developments to increase FEMA's reaction and capacity in the face of a catastrophic event, FEMA's response will continue to be governed by the provisions of a "Major Disaster" under the Stafford Act, suggesting that the distribution of assistance will continue to be hampered. It is essential to consider amending the Stafford Act and to create a new response level for "Catastrophic Incidents," based on the definition of such in the Post-Katrina Emergency Management Reform Act of 2006, and upon the declaration of a "Catastrophic Incident", provide mechanisms within the Stafford Act to expedite assistance to local governments, utility companies, and residents in a cohesive and coherent way..

Following a serious catastrophe, the process of recovery must start by assuring that funds are available for local governments to return to work. Debris and trash must be removed. Law and order must be restored. Buildings need to be inspected to determine which are safe. Plans must be approved to rebuild what was lost. The Stafford Act allows FEMA to cover the overtime costs of local government employees involved in disaster recovery work, but when a local government discovers that its tax base has destroyed due to a catastrophe, it cannot pay employee's regular salaries, let alone overtime. After Hurricane Katrina, New Orleans was forced to lay off 3,000 workers due to a lack of money. Provisions must be included within the Stafford Act to allow FEMA to fund both the salaries and overtime of state and local workers following a catastrophe for an appropriate amount of time.

To make up for limitations within the Stafford Act, Congress historically has appropriated billions of dollars and established special programs to provide additional assistance following a catastrophe. After the 1994 Northridge (Los Angeles) Earthquake, Congress appropriated \$11 billion. \$40 billion was appropriated in assistance in the recovery from the September 11 attack, and \$110 billion after Hurricanes Katrina and Rita.

With the bulk of immediate rescue and recovery work, along with long-term planning and rebuilding resting in the hands of state and local governments, a system that provides federal assistance to state and local governments as quickly as possible is paramount.

Where possible, money appropriated by Congress following a catastrophe should also be provided directly to state and local governments in the form of block grants. This will eliminate the burden and associated time delays placed on federal agencies as they distribute the assistance, and it will provide flexibility for state and local entities to deploy the money as they see fit.

A general rider within the Stafford Act for catastrophic events, giving the President, in consultation with Congress, the authority to wave Stafford Act provisions and regulations following a catastrophe represents another effective means of providing regulatory flexibility following a catastrophe. To prevent an open ended mandate, the rider could also require the President, after an initial damage assessment, and in coordination with Congress, to set a cap on the amount of immediate and long term recovery assistance that will be provided for the catastrophe.

The resumption of utilities is important to both the short term and long term recovery following a catastrophe. Lives can be saved and suffering minimized with functioning utilities. Yet, the Stafford Act only covers public and non-profit utilities and does not recognize the presence of de-regulated, for profit utilities.

For a community to recover from a catastrophe, money is essential and accelerated action is needed to start the process of recovery. The Stafford Act is based on the assumption that assistance to business and individuals should first come from insurance. It is essential for businesses and individuals to have insurance, and for the government to encourage insurance coverage in order to minimize the amount of taxpayer money spent following a catastrophic disaster.

One difficulty with this approach is that, following a catastrophe, important documents required to document ownership and proof of insurance are often destroyed or lost, making it difficult for people to apply and receive government assistance in a timely fashion. As Don Wilson, president of the national Association of Small Business Development Centers explained following Katrina, "Even if your CPA has copies of your records, their records may have been destroyed."

Even more troubling, insurance companies have moved to minimize losses, leaving victims in difficult financial positions. In a bid to avoid payouts to those who had hurricane – but not flood – coverage following Katrina, insurance companies argued that the damage in New Orleans was caused by flooding, not the hurricane, and that the devastation along the Gulf Coast was caused by surge flooding, not hurricane winds. Numerous Katrina related lawsuits against insurance companies are making their way through the courts, and in time judgments will be levied and settlements reached, resulting in payouts – but such comes years after people have made the decision to rebuild or leave.

Even when insurance companies act to make payments, the devastation that follows a catastrophe can overwhelm the company and result in multi-month delays for insurance payments. Nine long months after Hurricane Katrina hit Louisiana, the insurance modeling firm ISO estimated that out of \$24.3 billion in insured losses in Louisiana, only half that amount – \$12.5 billion – had been paid out.

The Stafford Act authorizes assistance to flow to qualified households to cover non-insured losses following a disaster – which is capped at \$30,000 per household and further subdivided with caps on repairs, temporary housing assistance, and other items. Given the problems inherent in quickly receiving insurance claims following a catastrophic disaster, this restriction should be amended so that following a catastrophe this aid can flow to qualified homeowners and renters regardless of insurance coverage. This will

immediately put money in people's pockets, encouraging them to stay put and rebuild their devastated home and community. This assistance could later be reimbursed to the government when insurance coverage is received, or paid only to those who pledge to remain in their community.

Finally, the Stafford Act should be amended to recognize the potential for 21st century catastrophes that I mentioned at the outset of this testimony.. As currently written, the Stafford Act excludes chemical, biological, and nuclear attacks and accidents from the list of disasters covered by the definition of a "Major Disaster." While the President has the authority under other acts to respond to these disasters, each has the potential to devastate local economies, wreck havoc on infrastructure, and generate the need for temporary housing. Recovering from such attacks or accidents could require extensive, long-term investment, which the assistance programs of the Stafford Act are designed to facilitate – but do not cover because a major disaster is defined to exclude these types of events. Such events, however, would be covered if the definition for a "Catastrophic Incident" based on the Post-Katrina Emergency Management Reform Act of 2006 is included in the Stafford Act.