



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

Washington, DC 20515

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July 23, 2009

**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management

**FROM:** Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff

**SUBJECT:** Hearing on “Post-Katrina: What it Takes to Cut the Bureaucracy and Assure a More Rapid Response After a Catastrophic Disaster”

**PURPOSE OF THE HEARING**

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Monday, July 27, 2009, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony on defining a catastrophic disaster, the role of the Federal Government after a catastrophic disaster, and whether additional authority is needed to address the response and recovery from a catastrophic disaster.

**BACKGROUND**

The Federal Emergency Management Agency (FEMA) is the Federal Government’s lead agency for preparing for, mitigating, responding to, and recovering from disasters and emergencies from all hazards, whether natural or man-made. FEMA’s primary authority in carrying out these functions is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)<sup>1</sup>.

The Stafford Act provides for two categories or “levels” of incidents: “major disasters” and “emergencies”. A “major disaster” is defined in section 102(2) of the Stafford Act<sup>2</sup> as:

<sup>1</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (2009).

<sup>2</sup> 42 U.S.C. § 5122 (2009).

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

An “emergency” is defined in section 102(1) of the Stafford Act<sup>3</sup> as:

Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

The primary distinction between a major disaster and an emergency is that emergencies are primarily “lesser events”, limited in cost<sup>4</sup>, or can be declared to “lessen or avert the threat of a catastrophe” (such as funding activities to protect citizens and communities prior to the landfall of a hurricane). For the most part, disasters of a catastrophic magnitude would also meet the definition of a major disaster,<sup>5</sup> and therefore any additional assistance for catastrophic events should build off of what is available for a major disaster.

## **I. Assistance Available in a Major Disaster Under the Stafford Act**

FEMA’s major Stafford Act programs for disaster response and recovery in the aftermath of a major disasters are the Public Assistance Program and the Individual Assistance Program. The Public Assistance Program, authorized primarily by sections 403, 406, and 407 of the Stafford Act<sup>6</sup>, reimburses State and local emergency response costs and provides grants to State and local governments, as well as certain private non-profits to rebuild facilities. The Public Assistance Program generally does not provide direct services to citizens.

The Individual Assistance program, also known as the Individuals and Households Program, is primarily authorized by section 408 of the Stafford Act.<sup>7</sup> The program provides assistance to families and individuals impacted by disasters, including housing assistance. Housing assistance includes money for repair, rental assistance, or “direct assistance”, such as the provision of trailers

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<sup>3</sup> *Id.*

<sup>4</sup> Under section 503(b) of the Stafford Act (42 U.S.C. § 5193) emergencies are generally limited to \$5 million unless the President reports to Congress. The \$5 million limitation is often exceeded.

<sup>5</sup> Since the definition of emergency is all inclusive (i.e., “any occasion or instance”), it is broader than the definition for a major disaster, and therefore theoretically there are events that could possibly have catastrophic consequences and not meet the definition of a major disaster. The possibility is remote. For example, all the terrorist events for which FEMA used its Stafford Act authority met the definition of a major disaster. Even if an event did not meet the definition of a major disaster, FEMA’s emergency authorities would likely provide adequate authority for weeks, if not months in the event of a catastrophic incident, while the President and Congress could decide on any additional authority for that event.

<sup>6</sup> 42 U.S.C. §§ 5170b, 5172 and 5173.

<sup>7</sup> 42 U.S.C. § 5174.

and mobile homes. This section also authorizes the “other needs program”, which provides grants to mostly low-income families for loss of personal property, as well as disaster-related dental, medical, and funeral costs to individuals regardless of income. Other Individual Assistance programs authorized by the Stafford Act include: unemployment assistance (section 410),<sup>8</sup> disaster food stamps (section 412),<sup>9</sup> disaster legal services (section 415),<sup>10</sup> and crisis counseling (section 416).<sup>11</sup>

Section 404 of the Stafford Act<sup>12</sup> authorizes the Hazard Mitigation Grant Program (HMGP). HMGP is an important part of the recovery effort. HMGP provides grants to State and local governments to rebuild after a disaster in ways that are cost effective and reduce the risk of future damage, hardship, and loss from all hazards. FEMA also provides grants under HMGP to assist families in reducing the risk to their homes from future disasters, through such steps as elevating the home or purchasing the home to remove it from the floodplain.

## **II. Defining a Catastrophe and the Federal Government’s Role**

In light of the magnitude of Hurricane Katrina and the difficulty many Gulf Coast communities faced after that disaster, there have been calls to reexamine the Stafford Act as well as FEMA’s administration of its authority under the Act, including whether the current statute is sufficient to address catastrophic disasters. A number of proposals have been made for a “catastrophic annex” to the Stafford Act.<sup>13</sup>

One difficulty is defining a catastrophe. The definitions of major disaster and emergency are already quite broad and provide the President a great deal of discretion. Among the questions the Committee may want to consider in defining a catastrophe are: Can catastrophe be defined with language that gives discretion? Should Congress give discretion especially if the authority would be extraordinary? Should there be objective benchmarks to give better guidelines while providing discretion to the President? Should there be recognition of events whose magnitude rise to a level where their impact is national, rather than limited to a particular state or community?

Some have suggested that specific types of hazards be included, such as a terrorist attack. However, the severity of the consequences is what denotes a catastrophic event, not the particular hazard that caused the event. Like all of emergency management, planning for catastrophic disasters should be all hazards.

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<sup>8</sup> 42 U.S.C. § 5177.

<sup>9</sup> 42 U.S.C. § 5179.

<sup>10</sup> 42 U.S.C. § 5182.

<sup>11</sup> 42 U.S.C. § 5183.

<sup>12</sup> 42 U.S.C. § 5170c .

<sup>13</sup> See, e.g. Mitchell L. Moss and Charles Shelhamer, *The Stafford Act Priorities for Reform*, The Center for Catastrophe Preparedness and Response, New York University 2007 pp, 15 – 16 and *Far From Home: Deficiencies in Federal Disaster Housing Assistance After Hurricanes Katrina and Rita Recommendations for Improvement*. Report of the Ad Hoc Subcommittee on Disaster Recovery of the Senate Committee on Homeland Security and Government Affairs, Senate Report 111-7, February 2009 pp 278-280.

### **III. Preparedness for, and Response, to a Catastrophic Disaster**

In 2006, the Committee passed and Congress enacted the Post Katrina Emergency Management Reform Act<sup>14</sup>, which addressed some of the potential gaps related to catastrophic disasters. Most of these new provisions are related to planning and response, but not recovery. With respect to planning, the Act amended the definition of a “catastrophic incident” as:

Any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;<sup>15</sup>

This definition provides the scope of planning activities for the Federal Government to prepare for a catastrophic incident. However, such a definition may be too broad to be used as a trigger for extraordinary authority to provide Federal assistance in the aftermath of such an event.

In addition, the Post-Katrina Emergency Management Act provided for additional authority for response activities including: “accelerated Federal assistance” which can be provided in the absence of a state request in certain situations during the response to a major disaster<sup>16</sup> or an emergency<sup>17</sup>; expedited payments for debris removal<sup>18</sup>; use of local contractors for federal disaster response contracts<sup>19</sup>; and the rescue, care, and shelter for pets and individuals and households with pets<sup>20</sup>.

### **IV. Recovery From a Catastrophic Disaster**

There are two characteristics about catastrophic disasters that may make new broad authority for recovery unnecessary. First, catastrophic disasters are complex, unusual, and hard to predict. Second, because of their magnitude, the shift from response to recovery often takes weeks or months, rather than days. Therefore, while the needs may be greater, there may be time to be deliberative and provide for specific and targeted authority for the unique problems presented in the recovery of a particular catastrophic disaster.

While every catastrophic disaster would likely have unique problems that would warrant targeted solutions, one difference from other disasters is that the need for Federal assistance would likely be more than what is necessary to “supplement the efforts and available resources of States, local governments, and disaster relief organizations.”<sup>21</sup>

There are a number of specific program requirements in FEMA’s disaster program that reflect a supplemental nature of Federal disaster assistance and would likely be an issue in any catastrophic disaster. Some of these are administrative or regulatory, such as adjusting the cost share

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<sup>14</sup> Title VI of P.L. 109-295.

<sup>15</sup> 6 U.S.C. § 701(4) (2008).

<sup>16</sup> 42 U.S.C. § 5170a.

<sup>17</sup> 42 U.S.C. § 5192.

<sup>18</sup> 42 U.S.C. 5173.

<sup>19</sup> 42 U.S.C. 5150.

<sup>20</sup> 42 U.S.C. 5170b.

<sup>21</sup> 42 USC 5122(2).

for Public Assistance and ineligibility of “straight time” for state and local response activities. Others may require a statutory change such as the cost share for HMGP and the “Other Needs Program” or the \$5 million cap on Community Disaster Loans, which provide for revenue losses for local governments and public agencies.

### **PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY**

In the 111<sup>th</sup> Congress, the Committee on Transportation and Infrastructure acted on the following bill related to FEMA’s Disaster Assistance Program:

- **H.R. 1746, the “Pre-Disaster Mitigation Act of 2009”:** This legislation reauthorizes and makes improvements to FEMA’s Pre-Disaster Mitigation Program, including codification of the competitive aspects of the program. On April 27, 2009, the House passed H.R. 1746 by voice vote.

In the 110<sup>th</sup> Congress, the Committee on Transportation and Infrastructure acted on the following bills related to FEMA:

- **H.R. 6658, the “Disaster Response, Recovery, and Mitigation Enhancement Act of 2008”:** This legislation amends the Stafford Act to improve the assistance the Federal Government provides to states, local governments, and communities after major disasters and emergencies. On July 31, 2008, the Committee ordered H.R. 6658 reported to the House.
- **H.R. 6109, the “Pre-Disaster Mitigation Act of 2008”:** This legislation reauthorized FEMA’s Pre-Disaster Mitigation program and makes improvements, including codification of the competitive aspects of the program. On June 23, 2008, the House passed H.R. 6109 under suspension of the rules by voice vote.
- **H.R. 3247, the “Hurricane Katrina and Rita Recovery Facilitation Act of 2007”:** This legislation provides additional Federal relief targeted to the recovery from Hurricanes Katrina and Rita in Louisiana and Mississippi. On October 29, 2007, the House passed H.R. 3247 under suspension of the rules by voice vote.
- **H.R. 3224, the “Dam Rehabilitation and Repair Act of 2007”:** This legislation establishes a program to provide grant assistance to states for use in rehabilitating publicly-owned dams that fail to meet minimum safety standards and pose an unacceptable risk to the public. On October 29, 2007, the House passed H.R. 3224 by a recorded vote of 263-102.
- **H.R. 1144, the “Hurricanes Katrina and Rita Federal Match Relief Act of 2007”:** This legislation provides significant relief for communities devastated by Hurricanes Katrina, Rita, and Wilma, by raising the Federal cost share for critical disaster relief programs to 100 percent and by authorizing the cancellation of Community Disaster Loans under certain conditions like all previous Community Disaster Loans. H.R. 1144 was enacted as part of

In the 111<sup>th</sup> and 110<sup>th</sup> Congresses, the Committee and Subcommittee held numerous hearings related to FEMA's Disaster Program, including:

- "Post-Katrina Temporary Housing Dilemmas and Solutions" (March 20, 2007)
- "FEMA's Emergency Food Supply System" (April 20, 2007)
- "FEMA's Preparedness and Response to ALL Hazards" (April 26, 2007)
- "Legislative Fixes for Lingering Problems that Hinder Katrina Recovery" (May 10, 2007)
- "Assuring the National Guard is as Ready at Home as It is Abroad" (May 18, 2007)
- "Readiness in the Post-Katrina and Post-9/11 World" (September 11, 2007)
- "National Flood Plain Remapping: The Practical Impact" (April 2, 2008)
- "Saving Lives and Money through Pre-Disaster Mitigation" (April 30, 2008)
- "Moving Mississippi Forward: Ongoing Progress and Remaining Problems" (June 19, 2008)
- "Role of the Federal Government in Small Business Disaster Recovery" (September 12, 2008)
- "FEMA's Response to the 2008 Hurricane Season and the National Housing Strategy" (September 12, 2008)
- "Post-Katrina Disaster Response and Recovery: Evaluating FEMA's Continuing Efforts in the Gulf Coast and Response to Recent Disasters" (February 25, 2009)
- "Disaster Capacity in the National Capital Region: Experiences, Capabilities, and Weaknesses" (April 3, 2009)
- "FEMA: Preparedness for the 2009 Hurricane Season" (May 1, 2009)
- "An Independent FEMA: Restoring the Nation's Capabilities for effective Emergency Management and Disaster Response" (May 14, 2009)
- "Still Post-Katrina: How FEMA Decides When Housing Responsibilities End" (May 22, 2009)

#### **WITNESSES**

**Mr. Craig Fugate**

Administrator

Federal Emergency Management Agency

**Mr. Donald P. Dunbar**

Adjutant General

State of Wisconsin

*Testifying on behalf of the National Governors Association*

**Mr. Dave Maxwell**

Vice-President

National Emergency Management Association

**Mr. Russ Decker**

President

International Association of Emergency Managers

**Mr. Mitchell Moss**

Henry Hart Rice Professor of Urban Policy and Planning

New York University

**Ms. Jane Bullock**

Principal

Bullock and Haddow, LLC

*Former FEMA Chief of Staff*

**Mr. Joe Becker**

Senior Vice-President, Disaster Service

American Red Cross

**Mr. Francis McCarthy**

Analyst

Congressional Research Service