



# An Examination of Federal Disaster Relief Under the Budget Control Act

**Bruce R. Lindsay**

Analyst in American National Government

**William L. Painter**

Analyst in Emergency Management and Homeland Security Policy

**Francis X. McCarthy**

Analyst in Emergency Management Policy

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## Summary

On August 2, 2011, the President signed into law the Budget Control Act of 2011 (BCA, P.L. 112-25), which included a number of budget-controlling mechanisms. As part of the legislation, caps were placed on discretionary spending for the next ten years, beginning with FY2012. If these caps are exceeded, an automatic rescission—known as sequestration—takes place across most discretionary budget accounts to reduce the effective level of spending to the level of the cap. Additionally, special accommodations were made in the BCA to address the unpredictable nature of the need for disaster assistance while attempting to impose discipline on the amount spent by the federal government on disasters.

The first section of this report addresses the traditional funding for major disaster declarations, both through annual requested amounts and through supplemental appropriations to meet greater, unanticipated costs. This section also explains the workings of the President's Disaster Relief Fund, a "no-year" fund that finances spending under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288).

Next, this report provides a basic overview of how disaster assistance is appropriated, what factors affect how much the federal government spends on disasters, how disaster relief is impacted by the BCA, and what the policy implications are for disaster assistance going forward under the constraints of the BCA. Included in this review are discussions of disaster spending, how it is calculated under the BCA, and potential costs that may be excluded under that calculation. The report also touches on the increasing number of disaster declarations and both the possible causes and likely cost implications of a greater number of declarations.

This report will be updated as needed.

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## Introduction

Concern over the size of the federal budget deficit and the national debt has brought congressional attention, as an ancillary issue, to both the amount of funding the federal government provides to states and localities for disaster assistance and the processes the federal government uses to provide that assistance. The amount of funding provided by Congress for declared emergencies and major disasters has grown considerably in the past decade, driven principally by the hurricane season of 2005.<sup>1</sup> Although funds have been reallocated at times from one account to another to provide for disaster-related assistance, disaster relief funding has historically not been fully offset. Disaster relief funding has usually not been tightly constrained, either, with supplemental spending bills often funding these activities outside the allocations of discretionary budget authority and outlays associated with budget resolutions. Two potential methods for reducing the impact of disaster assistance spending on the federal budget are (1) the use of offsets and (2) placing controls on the level of allowable spending.

Among its provisions, the Budget Control Act (P.L. 112-25, hereafter the BCA) provides a mechanism designed, arguably, to limit spending on major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, hereafter the Stafford Act), thereby limiting the impact of such spending on the budget deficit.<sup>2</sup> This report reviews current disaster funding practices and examines potential issues presented to disaster funding under the BCA mechanism. The report also discusses how OMB calculates the “allowable adjustment” to discretionary spending caps for disaster relief pursuant to the BCA, and the potential policy implications that may result from that process.

## An Overview of Disaster Spending: Federal Disaster Assistance and the Stafford Act

The Stafford Act authorizes the President to declare a major disaster in response to a governor’s request for federal assistance.<sup>3</sup> The declaration enables federal agencies to provide assistance to state and local governments overwhelmed by the incident. While the majority of federal assistance for major disasters to states and localities is provided through the Federal Emergency Management Agency (FEMA), other federal agencies and offices also provide assistance once a major disaster has been declared. These include the U.S. Army Corps of Engineering, the Department of Transportation, and the Department of Education among others. The assistance provided by these agencies is often requested, and then reimbursed by FEMA (this is referred to as a Mission Assignment). However, in some circumstances the agencies have the authority to fund their assistance efforts through their respective budgets—even when an incident is declared under the Stafford Act. As will be shown later in this report, the assistance provided by these agencies has a bearing on how the spending caps are determined under the BCA.

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<sup>1</sup> Data and information on disasters can be found at, NOAA: National Climate Data Center, *National Climate Data Center Billion Dollar U.S. Weather/Disasters Page*, NCDC Billion Dollar U.S. Weather/Climate Disasters page, June 17, 2011, <http://www.ncdc.noaa.gov/oa/reports/billionz.html>.

<sup>2</sup> 42 U.S.C. 5121 et seq. For further analysis on Stafford Act disaster assistance see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Francis X. McCarthy.

<sup>3</sup> For further analysis on emergency and disaster declarations see CRS Report RL34146, *FEMA’s Disaster Declaration Process: A Primer*, by Francis X. McCarthy.

## **The Disaster Relief Fund**

As mentioned previously, the majority of disaster assistance is provided by FEMA. Once the declaration has been issued by the President, FEMA provides various forms of disaster relief through its Disaster Relief Fund (DRF). The DRF is a no-year account<sup>4</sup> that is used to fund response activities and pay for ongoing recovery programs. The DRF is also used to reimburse Mission Assignments to other federal agencies, and pay for declared emergencies, fire management assistance grants, and major disasters that might occur.<sup>5</sup>

Current budgetary practice generally consists of funding the DRF through regular appropriations acts and begins with the Administration's formulation of the budget request for the account. Among the data points used to determine the budget request are: (1) funding levels currently available in the DRF; (2) the five-year rolling average of "normal" disaster costs;<sup>6</sup> (3) pending recovery costs; and (4) the estimated monthly recoveries of unobligated funds.<sup>7</sup>

Based on these data points, since FY1998 the Administration's request for the DRF has been \$1.3 billion or more each year. The average budget request between FY2000 and FY2011 is roughly \$2 billion. Yet, the average the current spend-out rate<sup>8</sup> for the DRF has been \$350 million dollars per month, which amounts to \$4.2 billion a year.<sup>9</sup> All things being equal, at this rate the DRF may run out of funding in any fiscal year for which it is budgeted for less than \$4 billion (see **Figure 2**).

## **Supplemental Appropriations**

Congress provides additional budget authority to the DRF when the balance is deemed insufficient to provide for assistance and recovery projects.<sup>10</sup> This is primarily done through supplemental appropriations acts.<sup>11</sup> Disasters costing more than \$500 million are considered outliers when FEMA budgets for the new fiscal year; however, this figure has been used for over a decade without being adjusted for inflation. In addition, based on data provided by FEMA, since 1992 there have been 20 declared disasters that have cost \$500 million dollars or more (see **Figure 1**). These declarations are presumably considered outliers for the purposes of budgeting for disasters. However, some might argue these incidents occur too frequently to be considered as outliers and ought to be included in calculating necessary budget levels for current and prospective disaster costs.

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<sup>4</sup> While most appropriations expire after a set period of time, no-year appropriations are available until expended. This is helpful in disaster recovery since infrastructure repair and mitigation projects can stretch out over several years.

<sup>5</sup> Fire Management Assistance Grants (FMAGs) and emergencies under the Stafford Act are discussed later in the report.

<sup>6</sup> Normal disasters are declared incidents that cost less than \$500 million dollars. Disasters costing over \$500 million are considered outliers and are removed from the calculation.

<sup>7</sup> For example, when a recovery project is completed for less than the estimated cost.

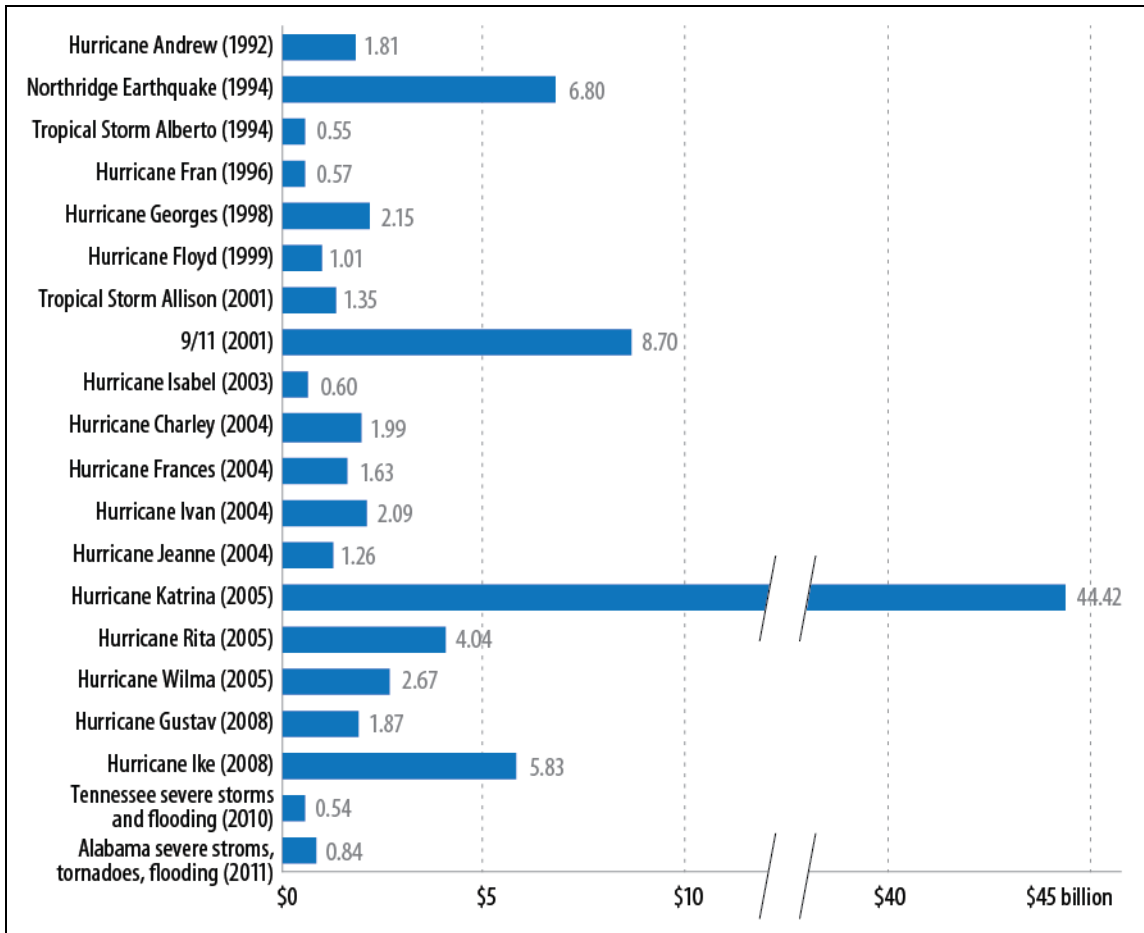
<sup>8</sup> The spend-out rate refers to the amount of money paid out of the account for a given period of time.

<sup>9</sup> Based on a CRS discussion with FEMA staff from the Office of the Chief Financial Officer.

<sup>10</sup> Congress also appropriates disaster funds to other accounts administered by other federal agencies pursuant to federal statutes that authorize specific types of disaster relief.

<sup>11</sup> For further analysis on emergency supplemental appropriations see CRS Report R40708, *Disaster Relief Funding and Emergency Supplemental Appropriations*, by Bruce R. Lindsay and Justin Murray.

**Figure I. Disasters Costing \$500 Million Dollars or More**  
1992-2011



**Source:** Based on data provided to the authors by FEMA’s Legislative Affairs Division.

**Note:** Spending on recovery continues for many of these events; these amounts represent a snapshot of disaster costs as of December, 2011.

Moreover, additional budget authority has been needed when a series of events occurs over a limited period of time. For example, in FY2008, additional budget authority for disaster assistance was needed for wildfires, floods, and hurricanes. In that year, while two hurricanes—Gustav and Ike—each exceeded the \$500 million threshold, other disaster events, along with ongoing disaster recovery needs from previous events, compounded the demand for federal funding. Consequently, there has been an increased reliance on the DRF to support communities and individuals in need. This can be seen in the funding history for the DRF from FY1991 to FY2011, shown in **Figure 2**.

The prevailing trend in recent years is for the DRF to need more funding than is provided in its base budget and in the regular appropriation acts—a need generally met through supplemental appropriations legislation. The use of supplemental appropriations is of concern because traditionally they have not been subject to budgetary constraints as they frequently have been designated as emergency appropriations—allowing them to be provided in excess of spending limits otherwise established by budget legislation intended to control the size of the deficit. Some critics of past policies have asserted that Administrations have failed to request adequate funding

for the DRF in order to mask potential disaster costs and project smaller deficits in their budget documents.<sup>12</sup>

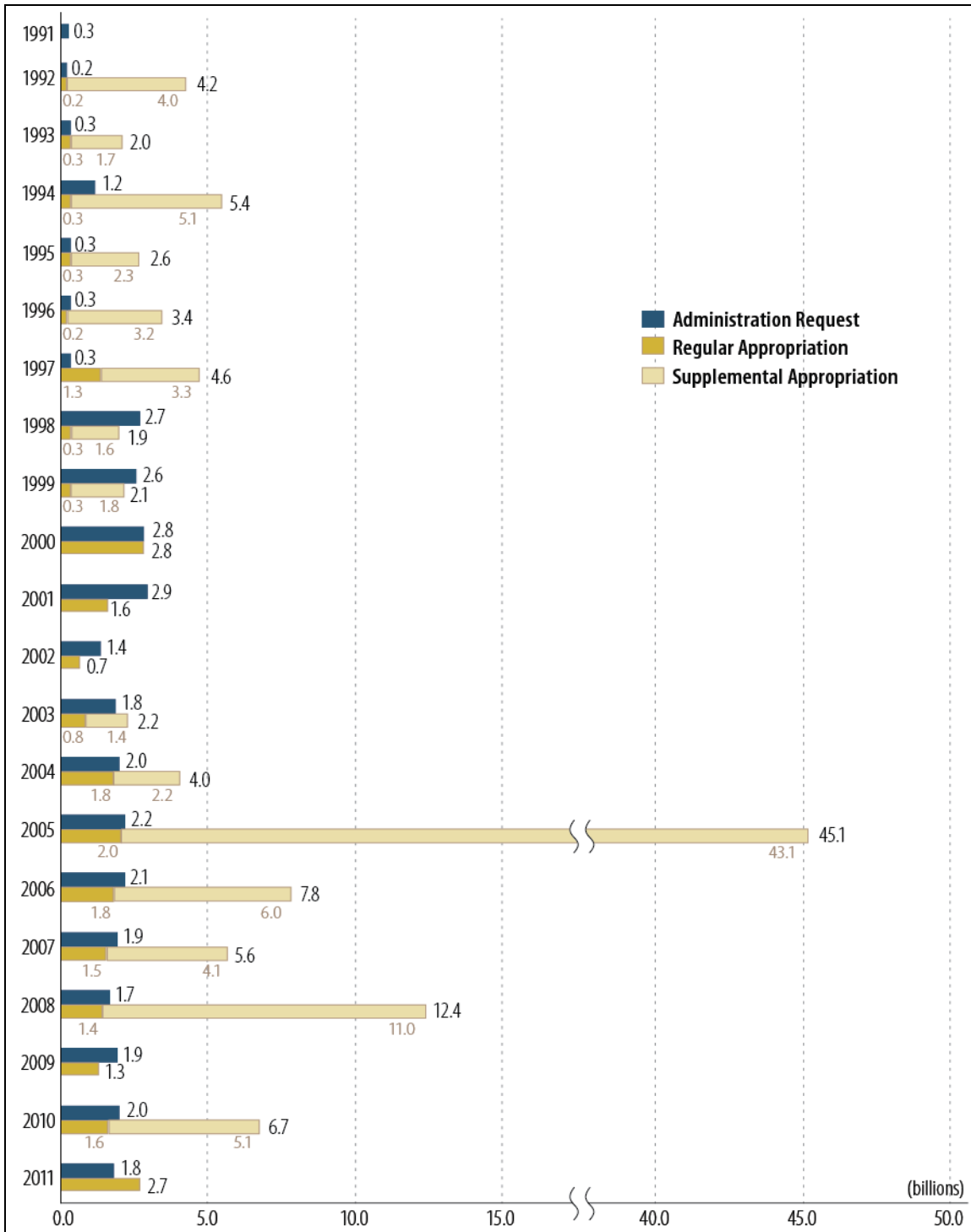
In **Figure 2**, FY1998 to FY2001 seem to be outliers, in that adequate funding was requested to meet disaster needs, but when those years are more closely examined, the Administration's request for regular appropriations is actually less than \$500 million in each of these years, supplemented by an emergency appropriation requested as part of the base budget—essentially, the budget process began with a built-in supplemental for disaster relief that would score outside the discretionary spending caps. This practice continued until the FY2003 request.

As a result of the concern over the size of the deficit and rising level of national debt, Congress has implemented measures to limit federal spending. The BCA includes measures that limit discretionary spending while providing a mechanism that recognizes the unexpected nature of disasters and the periodic need for disaster relief funding beyond what the budget envisions.

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<sup>12</sup> For example, see Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, Washington, DC, February 26, 2009, p. 36, <http://www.gpoaccess.gov/usbudget/fy10/pdf/fy10-newera.pdf>.

**Figure 2. Disaster Relief Fund, Administration Request and Appropriation**  
(Over FY1991-FY2011, budget authority in billions)



**Source:** CRS data using Administration budget documents and appropriations statutes.

**Note:** Figures have been rounded. Amounts reflect requests and appropriations in a given fiscal year, without regard to emergency designations under budget control legislation or linkage to particular disasters. Administration requests from FY1991 to FY1997 represent the previous average spending amount of \$320



million during the disaster-quiescent 1980s, with the exception of 1994 when the request level reflected the estimated spending for the Midwest flooding of 1993. Based on the increased disaster activity of the 1990s and outlier events such as the Mississippi flooding, Hurricane Andrew, and the Northridge earthquake, requested amounts were recalibrated for FY1998 to better address the growth in disaster spending on an annual basis. Rates of spending on disaster recovery by FEMA differ over time depending on available funding and emergency needs.

## **Budget Control Act (BCA)**

On August 2, 2011, the President signed into law the Budget Control Act of 2011 (P.L. 112-25), which allowed the national debt ceiling to be raised while also implementing a range of budget-controlling mechanisms.<sup>13</sup> As part of the legislation, caps were placed on discretionary spending for the next ten years, beginning with FY2012. If these caps are exceeded, an automatic cancellation of budget resources—known as sequestration—takes place across most discretionary budget accounts to reduce spending down to the cap.

The BCA allows for adjustments to the cap in a handful of situations, essentially raising it to allow for certain categories of spending. One of those adjustments is for emergencies, which is familiar to many observers of the budget process, but a new category of spending was defined in law for “disaster relief,” allowing it to be treated separately from other emergencies.

In the past, “emergency appropriations” were often synonymous with “disaster relief.” As noted earlier, although a base level of funding was provided in regular appropriations bills for the DRF and other programs that support disaster response and recovery efforts, these accounts were often bolstered by supplemental appropriations bills as needed. Often the disaster funding was designated as an emergency appropriation, which meant that it would not count against statutory or congressional discretionary spending limits and thus did not have to be offset.

Under the BCA, the discretionary spending limit can be adjusted upward to make room for an uncapped amount of emergency spending and adds the following definitions to existing budget law:

- (20) The term “emergency” means a situation that—
  - (A) requires new budget authority and outlays (or new budget authority and the outlays flowing there from) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and
  - (B) is unanticipated.
- (21) The term “unanticipated” means that the underlying situation is—
  - (A) sudden, which means quickly coming into being or not building up over time;
  - (B) urgent, which means a pressing and compelling need requiring immediate action;
  - (C) unforeseen, which means not predicted or anticipated as an emerging need; and
  - (D) temporary, which means not of a permanent duration.<sup>14</sup>

Prior to enactment of the BCA, supplemental appropriations for disaster relief were often designated as emergency spending. The enactment of the BCA distinguishes disaster relief spending, though often unanticipated, as separate from emergency spending and, as a result, limits disaster relief. “Disaster relief,” under the BCA, is defined as activities carried out pursuant

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<sup>13</sup> For further analysis of the Budget Control Act see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan.

<sup>14</sup> Budget Control Act of 2011, P.L. 112-25, §102.

to a determination under Section 102(2) of the Stafford Act, which authorizes the President to make a major disaster declaration.<sup>15</sup> The BCA, however, created a separate limited cap adjustment specifically for disaster relief, and says that funding designated as disaster relief is not eligible for the unlimited cap adjustment for emergency spending.<sup>16</sup>

The limit established by the BCA on adjustments to the cap for disaster relief is based on the average funding provided for disaster relief over the last ten years, excluding the highest and lowest annual amounts, calculated by the Office of Management and Budget.<sup>17</sup> If Congress spends less than that average on disaster relief in a given fiscal year, the cap can be further adjusted upward by the unspent amount in the following year. It is important to note that this adjustment limitation is not a restriction on disaster assistance per se—rather it is a restriction on how much the cap can be adjusted upward to accommodate the assistance. Also, spending within the cap does not require offsets. As mentioned earlier, Congress has in the past funded the DRF and other elements of the budget that provide disaster assistance with discretionary budget authority that falls within the cap.

## **OMB Report**

The Office of Management and Budget (OMB) manages the sequestration process and the limits on adjustments available to raise the spending cap. The BCA requires OMB to annually calculate the adjusted 10-year rolling average of disaster relief spending that sets the allowable cap adjustment for disaster relief.

OMB's methodology for calculating the allowable adjustment is tied to the language of the BCA's definition of "disaster relief" which includes only amounts that were appropriated or authorized through legislation that specifically referenced Section 102(2) of the Stafford Act. In its report, OMB illustrated this by comparing two similar education programs targeting students in hurricane-affected areas.<sup>18</sup> One program had appropriations language specifically referencing the major disaster declaration—which was counted, and one program that had language only mentioning the hurricanes rather than the disaster declaration—which was not counted. In making its calculation, OMB included funding provided through both annual and supplemental appropriations bills for 29 individual accounts managed by 11 agencies and departments. OMB has not made any other estimates of "disaster relief" spending other than those called for by the BCA.

In accordance with the BCA, OMB has calculated the allowable adjustment for FY2012 as \$11.3 billion.<sup>19</sup> OMB will make a similar calculation each year, taking into account the latest

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<sup>15</sup> Under a major disaster declaration, state and local governments and certain nonprofit organizations are eligible (if so designated) for assistance for the repair or restoration of public infrastructure such as roads and buildings. A major disaster declaration may also include temporary housing, unemployment assistance, crisis counseling for families and individuals, and community disaster loans for local governments. The governor of the impacted state requests the types of assistance considered necessary to address the needs of the state.

<sup>16</sup> Budget Control Act of 2011, P.L. 112-25, §101.

<sup>17</sup> *Ibid.*

<sup>18</sup> Office of Management and Budget, *OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate*, Washington, DC, September 1, 2011, pp. 2-3.

<sup>19</sup> Office of Management and Budget, *OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate*, Washington, DC, September 1, 2011, p. 1.

information available on disaster funding for the 10 previous fiscal years, and excluding the highest and lowest years. As the average rolls forward, the available adjustment will change.

It is worth noting, however, that the cap is calculated in nominal dollars and does not adjust for inflation. This will become more significant over time if inflation rises, and if the allowable adjustment begins to decrease as projected in 2016.

## **Analysis and Potential Policy Implications**

A number of policy questions are emerging as a result of the implementation of the BCA. These include what the implications are of possible failures to capture appropriate disaster relief expenditures in OMB calculations; debate over Stafford Act assistance that is excluded from the disaster relief calculations; whether severe disaster years will strain the adjustment mechanism; debate over the use of offsets; and the implications of the rising number of emergency declarations under the Stafford Act.

### **Expenditures Omitted from the 10-Year Average**

As previously mentioned, under the BCA, future spending caps on disaster relief and OMB's methodology for calculating the allowable adjustment are based on Section 102(2) of the Stafford Act. As a result of OMB's interpretation of the definition, when OMB reviewed appropriations for inclusion in the "disaster relief" calculation, if the Stafford Act was not explicitly cited those amounts were omitted—even when the funding was clearly for response to incidents declared as major disasters (see OMB quotations below). In some cases the legislative text included "pursuant to the Stafford Act." In other cases this specific language was omitted. It is not likely that precision in the language contemplated that the wording would one day be the basis of a cap on disaster spending.

Its review resulted in this construction: when the legislative text stated the funding was pursuant to the Stafford Act, OMB included that amount in the 10-year average. On the other hand, when the legislative text made no reference to the Stafford Act—whether it referred to the declared incident or not—OMB did not include that amount in the 10-year average. OMB illustrated such omissions in the Report's methodological description. According to OMB:

... in determining the amount that was "provided for disaster relief" in fiscal year 2005, OMB included in the calculation the funding that the Congress appropriated ... to the Department of Education "Hurricane Education Recovery" account for "assisting in meeting the educational needs of individuals affected by hurricanes in the Gulf of Mexico" because the appropriations language specified that it was "for students attending institutions ... located in an area in which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act."<sup>20</sup>

The OMB Report further states:

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<sup>20</sup> Office of Management and Budget, OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate, September 1, 2011, p. 2, [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/disaster\\_relief\\_report\\_sept2011.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/disaster_relief_report_sept2011.pdf).

OMB did not include in its calculations those amounts ... Congress appropriated in response to a presidentially-declared major disaster when such amounts were not specifically designated in statute to carry out activities pursuant to the Stafford Act and the Act itself was not specifically referenced. For example, OMB did not include in its calculations for fiscal year 2009 the appropriations ... Congress provided in December 2009 to the Department of Education “Innovation and Improvement” account “for competitive awards to local educational agencies located in counties in Louisiana, Mississippi, and Texas that were designated by ... [FEMA] as counties eligible for individual assistance due to damage caused by Hurricanes Katrina, Ike, or Gustav” because the amounts were not specified as being for activities undertaken pursuant to a major disaster declaration under the Stafford Act and the [Stafford] Act was not specifically referenced.<sup>21</sup>

OMB took this position despite the fact that it has not always been the practice to include a specific reference to the Stafford Act in supplemental appropriations for assistance in response to major disasters. An example of past practice is presented below.

### *Pre-BCA Disaster Assistance Spending*

In the Disaster Relief and Recovery Supplemental Appropriations Act, 2008,<sup>22</sup> Title I, Chapter 1 outlines relief funds provided through the Department of Agriculture, including the following provisions (emphasis added):

#### NATURAL RESOURCES CONSERVATION SERVICE

##### EMERGENCY WATERSHED PROGRAM

For an additional amount for the “Emergency Watershed Protection Program”, \$100,000,000, to remain available until expended, for disaster recovery operations.

##### FARM SERVICE AGENCY

##### EMERGENCY CONSERVATION PROGRAM

For an additional amount for “Emergency Conservation Program”, \$115,000,000, to remain available until expended.

##### RURAL DEVELOPMENT PROGRAMS

##### RURAL DEVELOPMENT DISASTER ASSISTANCE FUND

**For grants, and for the cost of direct and guaranteed loans, for authorized activities of agencies of the Rural Development Mission Area, \$150,000,000, to remain available until expended, which shall be allocated as follows: \$59,000,000 for single and multi-family housing activities; \$40,000,000 for community facilities activities; \$26,000,000 for utilities activities; and \$25,000,000 for business activities: Provided, That such funds shall be for areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974: Provided further, That the cost of such direct and guaranteed loans, including the cost of modifying**

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<sup>21</sup> Ibid., p. 2.

<sup>22</sup> Division B of P.L. 110-329, 122 Stat. 3585 *et seq.*

loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That the Secretary of Agriculture may reallocate funds made available in this paragraph among the 4 specified activities, if the Secretary notifies the Committees on Appropriations of the House of Representatives and the Senate not less than 15 days prior to such reallocation.

In addition, for an additional amount for grants, and for the cost of direct and guaranteed loans, for authorized activities of the Rural Housing Service, \$38,000,000, to remain available until expended, for single and multi-family housing activities: Provided, That such funds shall be for areas affected by Hurricanes Katrina and Rita: Provided further, That the cost of such direct and guaranteed loans, including the cost of modifying loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

Of all the appropriations listed, only the provisions in bold would be counted by OMB for purposes of calculating the cap on the adjustment for disaster relief as defined under the Budget Control Act. Only the Rural Development Disaster Assistance Fund appropriation specifically noting the declaration of a major disaster under the Stafford Act meets the standard described in OMB's report. The other provisions, mentioning the storms that were the root cause of the declaration, or the intent that the funds be for "disaster recovery" would likely not be adequate to meet the OMB methodology for accounting for disaster relief spending.

### *Disaster Relief Spending Under the BCA*

In the "minibus" legislation, P.L. 112-55, provisions providing disaster relief under some of these same accounts were written as follows (emphasis added):

Section 735. There is hereby appropriated for the 'Emergency Conservation Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), \$122,700,000, to remain available until expended: Provided, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That there is hereby appropriated for the 'Emergency Forest Restoration Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), \$28,400,000, to remain available until expended: Provided further, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That there is hereby appropriated for the 'Emergency Watershed Protection Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), \$215,900,000, to remain available until expended: **Provided further, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985.**

All of this funding would be considered by OMB as disaster relief due to the citations of major disasters under the Stafford Act, as well as the specific proviso in bold declaring Congressional intent that it be categorized as such.

It could be argued that a more precise 10-year average of disaster assistance would include all spending for major disasters regardless of whether the legislative text referred to the Stafford Act.

There are at least two changes that could be made that would help ensure a more accurate calculation of the 10-year average spent on disaster relief for use as a cap adjustment under the BCA. First, Congress could change their practices and provide the Stafford Act designation in all future appropriations legislation. However, it is important to note that at the time of appropriation, it is not always clear if funding is going to a major disaster, thus meriting a designation. Second, Congress could amend the BCA to require that OMB recalculate “disaster relief” amounts based on a broader methodology. Both of these changes would likely result in a higher, and arguably more accurate yearly total of disaster relief, and a larger allowable adjustment for disaster relief under the BCA than under current practices.

For example, Hurricane Katrina was declared a major disaster on August 29, 2005. Since then, Congress has provided disaster assistance through several supplemental appropriations and numerous federal programs. Large incidents like Katrina often receive assistance from the federal government years after the incident—the appropriations impact the budget for disaster assistance as large infrastructure and mitigation projects are completed and reimbursed, yet because this funding was appropriated without direct reference to a Stafford Act declaration, it is not factored into the calculation for disaster relief.

### **Other Types of Excluded Stafford Assistance**

The BCA excludes other types of assistance provided under the Stafford Act. These are emergency declarations provided under Section 102(1) and Fire Management Assistance Grants provided under Section 420(a). Emergency declarations authorize activities that can help states and communities carry out essential services during emergency situations.<sup>23</sup> Emergencies can also be declared prior to an incident, at the request of the governor, to save lives and prevent loss.<sup>24</sup> For example, emergency declarations have been declared prior to a hurricane making landfall to help state and local governments take necessary measures (evacuation assistance, placement of response resources, etc.).<sup>25</sup> Unlike major disasters, the President does have the authority to declare an emergency without a governor’s request when the incident involves a subject area where the “Federal government exercises exclusive or primary responsibility and authority.”<sup>26</sup>

Compared to major disaster declarations, emergency declarations are generally considered a minor expense (congressional notification is required when spending for an emergency exceeds \$5 million); however, numerous declarations can be declared in a year and, like major disasters, they are funded through the DRF. In 2005, 68 emergency declarations were declared, 50 of which were for each individual state to help relocate Hurricane Katrina victims who were displaced by the storm. In addition, since Hurricane Katrina, the federal government has increased its efforts to pre-position resources before a hurricane makes landfall. If this trend continues the cost associated with emergency declarations may increase due to the more comprehensive preparations.

In the OMB report, the spending levels on disaster relief from the DRF in OMB’s accounting is less than the total amount expended from the DRF in the years reported. This difference may

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<sup>23</sup> For example, food, sheltering and medical care.

<sup>24</sup> For example, evacuations and setting up shelters.

<sup>25</sup> Recent examples of pre-event declarations include emergency declarations prior to Hurricanes Katrina, Rita, and Gustav making landfall (emergency declarations 3212, 3260, and 3290 respectively).

<sup>26</sup> 44 CFR 206.35(d). This category would likely include acts of terrorism.

include the omission of expenditures for emergency declarations and declarations for the Fire Management Assistance Grant Program.<sup>27</sup>

Declarations for the Fire Management Assistance Grant Program include equipment, personnel, and supplies to states and localities for the mitigation, management, and control of fires that threaten to become a major disaster.<sup>28</sup> As with emergency declarations, declarations for the Fire Management Assistance Grant Program are relatively modest in cost when compared to major disaster declarations. A review of declarations under the Fire Management Assistance Grant Program shows the most expensive year was 1998, in which 53 declarations were made, accounting for obligations of roughly \$105 million.<sup>29</sup>

Because emergency and fire declarations derive funding from the DRF, it could be argued that excluding them from the ten-year average calculation for disaster relief generates an artificially low result. It could be further argued that including emergency and fire declarations would more accurately forecast federal disaster expenses. Although it is likely that including all federal assistance for emergency and disaster relief would increase the ten-year average, the size of the increase would depend on the new methodology used to calculate the amount of assistance provided.

### **Funding for Severe Disaster Years**

Congress provided additional budget authority for disaster assistance in 10 appropriation laws following the hurricanes of 2005. While OMB removed the \$37 billion spent on disaster relief in 2005 as an outlier when calculating the allowable adjustment for disaster relief to the cap, response and recovery to these storms went well beyond that first year. Appropriations for recovery from these storms between FY2006 and FY2010 was still substantial—\$32 billion was spent in FY2006, in great part because of those ongoing recovery efforts.

The sizeable initial disaster relief expenditures for Hurricane Katrina and the other 2005 storms will begin to lose relevance in calculating the allowable adjustment for disaster assistance for FY2016, and will no longer impact calculations for the allowable adjustment in FY2017. Once FY2005 and FY2006 rotate out, there will be a corresponding drop in the allowable disaster assistance adjustments. The reduction in the allowable adjustment will be more significant if disaster spending is below the 10-year average in the intervening years. In a scenario where disaster spending stays at the 10-year average level, the allowable adjustment will fall by \$2.2 billion from FY2015 to FY2016, and then by another \$2.9 billion from FY2016 to FY2017—a reduction of 41% in just two years. Moreover, as the Administration and Congress work to spend under the adjustment, the cap could continue to decrease, increasing the likelihood of a bad storm year significantly straining the budget mechanisms in place at that time.

Some policymakers might welcome such a series of developments, arguing the purpose of the BCA is to rein in deficit spending by either keeping spending under the caps, or by triggering a sequestration. Others might contend that the limitations on disaster spending are too severe, given the unpredictable demand for disaster relief in the context of a very tight budget where offsets

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<sup>27</sup> OMB did not respond to CRS inquiries about the details of its methodology.

<sup>28</sup> 42 U.S.C. 5187.

<sup>29</sup> DHS/FEMA, Calendar Year Summary of Obligations, 1988-2010.

may be difficult to come by without significant impacts on government operations. Congress would have to spend well above the eligible adjustment in at least two years before FY2016 to maintain a consistent funding baseline for disaster assistance—decisions that could constrain the rest of the discretionary budget.

It is possible that the Administration and Congress could rely on the available adjustment to fund all accounts where disaster relief is appropriated, rather than relying on discretionary spending under the cap to do so. This may be a particularly attractive option for appropriators as the discretionary budget becomes more constrained. If this pattern of funding becomes the norm, and a severe disaster year demands increased disaster relief, as Congress seeks more funds, there are at least four possible outcomes: (1) discretionary spending cuts, either by Congress or through sequestration, to “pay for” the additional assistance, (2) designation of disaster assistance as emergency funding, despite the definitions in the BCA, (3) creation of designated revenue raisers by the Congress to finance extra disaster relief spending, or (4) renegotiation of the underlying budget control laws.

Another potential issue is the impact of a mega-disaster might have on the federal budget. For example, the FY2005 supplemental for the 2005 hurricane season was \$45.1 billion. If an event with similar or even greater damage costs, such as a New Madrid earthquake, occurred under the current budget constraints set forth in the BCA, Congress could find itself in need of roughly hundreds of billions in offsets to pay for disaster relief or possibly facing a sequestration of similar size if it adheres to the BCA’s definitions.<sup>30</sup> One might question whether the federal budget could absorb a sequestration of this magnitude without inflicting a severe impact on a national economy already shocked by the direct impact of the disaster. An alternative to that possibility is that, if such conditions arise, Congress may choose to reach an agreement outside of the timelines and constraints currently set forth in the BCA.

### **Contention over Disaster Assistance Offsets**

In the fall of 2011, there was extensive public debate over the possible requirement of offsets for disaster assistance. Those opposed to the use of offsets argue that their use could politicize disaster assistance by allowing policymakers to target certain programs for the needed spending reduction. Assistance to disaster victims could be delayed while Congress debates the issue. Opponents have also argued that emergency funding for other endeavors, such as war funding, have not faced the same requirement.

Those in favor of offsetting disaster assistance argue that offsets do not deny disaster victims aid; they merely provide a way of doing so without increasing the deficit. Proponents also argue that the concern over delayed disaster assistance is without merit. As demonstrated in **Table 1**, while it may take some time to provide relatively smaller incidents such as the Nisqually Earthquake with supplemental funding, Congress has responded to the needs of disaster victims by appropriating additional funds for disaster relief in a matter of days as with the September 11<sup>th</sup> terrorist attacks and Hurricane Katrina. It should be noted however, the actions represented in **Table 1** were emergency spending actions that were not subject to offsets. Whether congressional action would be as rapid under the BCA framework is uncertain.

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<sup>30</sup> W. Barksdale Maynard, “When the Big Muddy Ran Backward,” *The Washington Post*, January 31, 2012, p. E1.



**Table I. Supplemental Funding for Large-Scale Disasters**

<b>Event</b>	<b>Date of Declaration</b>	<b>Date of Enactment</b>	<b>Days</b>
Hurricane Katrina	August 29, 2005	September 2, 2005	3
Hurricane Isabel	September 18, 2003	September 30, 2003	12
9/11 Terrorist Attacks	September 11, 2001	September 18, 2001	7
Nisqually Earthquake	March 1, 2001	July 24, 2001	114
Hurricane Floyd	September 16, 1999	October 20, 1999	34
Northridge Earthquake	January 17, 1994	February 12, 1994	26
Midwest Floods	June 11, 1993	August 12, 1993	62
Hurricane Andrew	August 23, 1992	September 23, 1992	31
Hurricane Hugo	September 20, 1989	September, 29, 1989	9

**Source:** CRS Report R40708, *Disaster Relief Funding and Emergency Supplemental Appropriations*, by Bruce R. Lindsay and Justin Murray.

**Note:** **Table I** reflects the number of days it took to enact the first supplemental appropriation after the incident was declared a major disaster. Some incidents (such as Hurricane Katrina) received more than one supplemental appropriation for disaster relief.

Sequestration may seem more appealing to some Members rather than finding offsets for disaster assistance if the allowable adjustment is inadequate and Congress chooses to not use emergency appropriations to support the DRF. Although the net accounting effect is the same over the medium term, sequestration involves automatic, largely across-the-board spending reductions after the fact, rather than a specific Congressional decision, affirmed by votes of the House and Senate and signed by the President to reduce funding for a specific program or programs with allies and stakeholders who may be provoked to action. The potential risks incurred by an automatic across-the-board cancellation of budget authority across the government regardless of the possible effect on national priorities should not be discounted, however.

### Increasing Declarations

Since FEMA's first full year of operations (1979) there has been a steady increase in the number of emergency and major disaster declarations. It is unclear what is causing the increase. On the one hand, it could be the result of more incidents. On the other hand, it could be the result of an increase in incidents for which a request for assistance is made (in other words, there is no increase in the number of incidents, rather, there is an increase in requests for federal assistance). The result could also be caused by a combination of the two, as well as by some other undetermined cause. However, while the number of declarations is often a focus for criticism, it is the costs within the declared events (determinations on eligible disaster spending) that can drive the higher disaster spending amounts.

The BCA provides a mechanism designed to reduce the impact of disaster relief spending on the national debt, but does not provide a means for limiting or reducing federal expenditures on disaster assistance. If declarations continue to increase unabated, the federal budget may have to absorb more and more of the costs associated with disaster assistance. Some might argue that in addition to spending adjustments for disaster assistance, other policies designed to reduce federal expenditures for assistance should also be pursued. These policy options include strengthening

declaration criteria, reducing the federal cost-share for incidents, and creating incentives that would encourage states to pursue more robust preparedness and mitigation measures.<sup>31</sup>

## **Concluding Observations**

The debate over the use of mechanisms to reduce the impact of disaster assistance on the deficit, such as the use of offsets, was temporarily moved to the back burner when FEMA deobligated funds designated for projects that came in under budget, providing, in conjunction with delays in funding for pending recovery projects to slow the use of resources, enough resources to fund the DRF to last until the beginning of the 2012 fiscal year.

The debate over disaster assistance may take place again in the near future due to a number of factors. While the current continuing resolution (P.L. 112-36) provided \$2.65 billion in FY2012 for disaster relief, as previously mentioned, the average spend-out rate for the DRF is \$350 million per month—or \$4.2 billion a year. If the average spending remains the same there may be another shortfall in the DRF some time before the end of FY2012. Moreover, in addition to recovery costs associated with Hurricane Katrina, significant costs were incurred in FY2011 that will also draw funding from the DRF in FY2012. These include Hurricane Irene (estimated at roughly \$1.5 billion), the 2011 fires, the Mid-Atlantic Earthquake of 2011, and Tropical Storm Lee. As mentioned previously, the BCA is designed to allow for a limited amount of additional spending on disaster relief beyond the discretionary spending limits it sets out. If the costs of disaster assistance continue to grow, other parts of the federal budget will need to absorb those costs if they exceed the adjustments. Policymakers may need to consider additional cost-saving measures to prevent this from occurring.

While the BCA may help curb or contain the impact of traditional disaster spending, the implications of a truly catastrophic incident such as Hurricane Katrina are unclear. If such conditions arise, Congress may choose to reach an agreement outside of the timelines and constraints currently set forth in the BCA.

## **Author Contact Information**

Bruce R. Lindsay  
Analyst in American National Government  
blindsay@crs.loc.gov, 7-3752

Francis X. McCarthy  
Analyst in Emergency Management Policy  
fmccarthy@crs.loc.gov, 7-9533

William L. Painter  
Analyst in Emergency Management and Homeland  
Security Policy  
wpainter@crs.loc.gov, 7-3335

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<sup>31</sup> For further analysis on emergency and major disaster declarations see CRS Report RL34146, *FEMA's Disaster Declaration Process: A Primer*, by Francis X. McCarthy. For further analysis on FEMA cost-shares see CRS Report R41101, *FEMA Disaster Cost-Shares: Evolution and Analysis*, by Francis X. McCarthy.

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