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FEMA's Disaster Declaration Process: A Primer

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Analyst in Emergency Management Policy

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Summary

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

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

Over the last quarter century, the amount of federal assistance provided through presidential disaster declarations has exceeded \$150 billion. Often, in recent years, Congress has enacted supplemental appropriations legislation to cover unanticipated costs. While the amounts spent by the federal government on different programs may be reported, and the progress of the recovery can be observed, much less is known about the process that initiates all of this activity. Yet, it is a process that has resulted in an average of more than one disaster declaration a week over the last decade.

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

Under current law while a governor or a tribal leader may make a request, the decision to issue a declaration rests solely with the President. Congress has no formal role, but has taken actions to adjust the terms of the process. For example, the Post-Katrina Emergency Management Reform Act of 2006, P.L. 109-295, established an advocate to help small states with the declaration process. More recently, Congress passed the Hurricane Sandy Recovery Improvement Act, P.L. 113-2, which had two potentially major impacts on the declaration process. First, the act authorized Native American tribal groups to directly request disaster assistance from the President rather than only requesting through a state governor. The second potential major impact in the act was that FEMA was directed to update its criteria for considering whether to make a recommendation to the President for Individual Assistance declarations.

Since the decision for a declaration is at the discretion of the President, there has been some speculation regarding the influence of political favor in these decisions. Some have posited various connections between the political party of the governor requesting or the prominence of some state’s congressional delegation on committee’s important to FEMA. While of interest,

those theories are usually not connected to, or at least fail to consider, the natural events that were the impetus for both the request and the decision.

Given the importance of the decision, and the size of the overall spending involved, hearings have been held to review the declaration process so as to ensure fairness and equity in the process and its results. Congress continues to examine the process and several pieces of legislation have been introduced during the 113th Congress to adjust the factors considered for a major disaster declaration. This report discusses the evolution of this process, how it is administered and recent changes enacted in law as well as amending legislation that has been introduced. This report will be updated as warranted by events.

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Background

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

Federal disaster assistance has served as the impetus for many supplemental appropriations bills over the last several decades, and has accounted for presidential declarations in every state and territory.⁴ The supplemental funds are placed in the Disaster Relief Fund (DRF) which is a “no-year” fund managed by the Federal Emergency Management Agency (FEMA) and used only for spending related to presidentially declared disasters.⁵

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

Disaster assistance is an almost perfect political currency. It serves humanitarian purposes that only the cynical academic could question. It is largely funded out of supplemental appropriations and thus does not officially add to the budget deficit. It promotes the local economy of the area where the building process occurs.⁶

While disaster assistance may be good “political currency,” a disaster declaration is generally the result of a tragic and devastating incident that disrupts (and sometimes takes) the lives of hundreds or thousands of families and individuals and the communities and states or tribal lands where they reside. The long-term economic and environmental impact of a disaster can be severe. The assistance offered from federal and private sources may or may not be commensurate with

¹ 42 U.S.C. §5122.

² Ibid. For a more detailed analysis of categories of declarations see CRS Report R42702, *Stafford Act Declarations 1953-2011: Trends and Analyses, and Implications for Congress*, by (name redacted) and (name redacted).

³ For example, see CRS Report RL34724, *Would an Influenza Pandemic Qualify as a Major Disaster Under the Stafford Act?*, by (name redacted), and CRS Report R41234 *Potential Stafford Act Declarations for the Gulf Coast Oil Spill: Issues for Congress*, by (name redacted).

⁴ For more information on disaster supplementals, see CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data*, by (name redacted) and (name redacted). For a listing of disaster declarations, see <http://www.fema.gov/disasters>.

⁵ For additional information on the DRF, see CRS Report R43537, *FEMA's Disaster Relief Fund: Overview and Selected Issues*, by (name redacted). Note: A “no year fund” refers to funds that do not lapse at the end of a fiscal year but instead carry over to the next year's accounts.

⁶ Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events* (Washington, DC: Island Press, 1999), p. 66.

the damage inflicted by a natural or man-made event. Following a disaster, years of rebuilding and recovery work may lie ahead for communities, tribes, and states. It is the declaration process that sets the federal recovery help in motion.

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

Section 401.

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

(b) Indian tribal government requests

(1) In general. The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that a major disaster exists consistent with the requirements of subsection (a).

(2) References. In implementing assistance authorized by the President under this chapter in response to a request of the Chief Executive of an affected Indian tribal government for a major disaster declaration, any reference in this subchapter or subchapter III (except sections 5153 and 5165d of this title) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.

(3) Savings provision. Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this subchapter through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

(c) Cost share adjustments for Indian tribal governments

(1) In general. In providing assistance to an Indian tribal government under this subchapter, the President may waive or adjust any payment of a non-Federal contribution with respect to the assistance if—

(A) the President has the authority to waive or adjust the payment under another provision of this subchapter; and

(B) the President determines that the waiver or adjustment is necessary and appropriate.

(2) Criteria for making determinations

The President shall establish criteria for making determinations under paragraph (1)(B).⁷

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

Sec. 5191. Procedure for declaration.

(a) Request and declaration. All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility. The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States 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.

(c) Indian tribal government requests

(1) In general. The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that an emergency exists consistent with the requirements of subsection (a).

(2) References. In implementing assistance authorized by the President under this subchapter in response to a request of the Chief Executive of an affected Indian tribal government for an emergency declaration, any reference in this subchapter or subchapter III (except sections 5153 and 5165d of this title) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.

(3) Savings provision. Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this subchapter through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.⁸

⁷ 42 U.S.C. §5170.

⁸ 42 U.S.C. §5191.

The declaration process is elaborated upon in regulations, specifically in Subpart B of 44 C.F.R. 206. While these regulations have been adjusted through the regulatory process during the past three decades, since 1974 the procedures have undergone little significant change until the inclusion of tribal groups in P.L. 113-2. The process itself is representative of the historical progression of federal disaster relief from being of an episodic nature to the current commonplace disaster declaration, now occurring on a weekly basis. The context in which disaster relief has grown has been in keeping with the growth of government and its concerns.

Federal disaster relief has a long history in the U.S. dating back to the last years of the eighteenth century and arguably provided much of the political genesis for the New Deal social welfare programs (Landis 1999; Landis 1998; Moss 1999). As Michele Landis argues, social and political construction of claimants for relief as helpless victims of external forces beyond their control (“Acts of God”) have exerted an enduring influence on American political discourse, which has manifested itself in heavy reliance on prior political precedents and analogies in constructing responses to current disasters.⁹

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

The process begins with a decision by the governor or tribal head on whether to conduct a Preliminary Damage Assessment (PDA) to consider whether a request for supplemental assistance is warranted. Information contained in the PDAs, along with the summaries prepared by FEMA regional offices that accompany gubernatorial requests, were long considered “pre-decisional and deliberative information” by the executive branch because they are part of the package that is developed and sent to the White House for the President’s review and ultimate decision.¹⁰ These materials have generally not been available under the Freedom of Information Act process.¹¹ However, during 2008, at the direction of Congress, FEMA began to list the results of the PDAs on its website. While the summaries of FEMA recommendations are still not available, the agreed-upon figures from the PDAs are now available to the public for review.¹²

⁹ Michael J. Trebilcock and Ronald J. Daniels, “Rationales and Instruments for Government Intervention in Natural Disasters” in Ronald J. Daniels, Donald F. Kettl, and Howard Kunreuther, eds., *On Risk and Disaster: Lessons from Hurricane Katrina* (Philadelphia: University of Pennsylvania Press, 2006), p. 104. For additional discussion of the evolution of emergency management see Claire B. Rubin, ed., *Emergency Management: The American Experience 1900-2005* (Fairfax, VA: Public Entity Risk Institute, 2007).

¹⁰ PDAs are conducted by FEMA regional staff along with state and local officials. In some instances, SBA and American Red Cross staff members may also participate in the assessment. For more information see the Preliminary Damage Assessment section of this report.

¹¹ This is based on an interpretation of FOIA Exemption #5. See <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-5>.

¹² U.S. Department of Homeland Security, Federal Emergency Management Agency, *Preliminary Damage Assessment Reports*, at <http://www.fema.gov/preliminar-damage-assessment-reports>.

Congress and the Declaration Process

Tribal Declarations

In the 113th Congress, following Hurricane Sandy, Congress passed the Sandy Recovery Improvement Act of 2013 (SRIA), P.L. 113-2. The act made one significant change to the Stafford Act declaration process.¹³ That significant change was one that Native Americans had long sought: the ability to directly request assistance from the federal government during times of disaster, rather than having to submit any requests through the governors of the affected tribal areas.

Section 1110 of the SRIA amends Sections 401 and 501 of the Stafford Act that contain the procedures for requesting types of disaster declarations.¹⁴ Previously, tribal groups were treated as local governments and thus not permitted to directly request disaster declarations from the federal government. As with local governments, the tribes were dependent on a request being made by the governor of the state where their territory is located.¹⁵ Tribal governments argued that the previous provision in the Stafford Act undermined their independence and sovereignty. This change in declaration policy for tribal groups had also been sought by FEMA to strengthen its government-to-government relationships with tribal groups and improve emergency management in those areas.¹⁶ As FEMA Administrator Craig Fugate stated in post-SRIA testimony before the Senate Indian Affairs Committee:

The updated policy reiterates the Agency's view of tribal governments as inherently sovereign nations and not political subdivisions of states. To this end, and to the extent permitted by law, FEMA consults with tribal governments and addresses any concerns before taking actions that may affect those nations. In addition, the new policy expressly states that FEMA will identify and take reasonable, appropriate steps to eliminate or diminish procedural impediments to working directly and effectively with tribal governments. In particular, the policy states that FEMA will review portions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and other laws, policies, and administrative rules in emergency management activities to determine how FEMA may work more directly with local tribal communities.¹⁷

Previously, the Stafford Act included the description of “an Indian tribe or authorized tribal organization, or Alaska Native village or organization” in the definition of local governments.¹⁸

¹³ While tribal declarations were the most significant change, the SRIA also requested an update of a current part of the process regarding factors considered for Individual Assistance designations. The IA update is discussed later in this report.

¹⁴ 42 U.S.C. §§5170 and 5191.

¹⁵ Section 102 (7) of the Stafford Act defined local governments as including “an Indian tribe or authorized tribal organization, or Alaska Native village or organization.” Section 401 of Stafford noted that “all requests shall be made by the Governor of the affected state.”

¹⁶ Rob Capriccioso, “FEMA Wants Tribes to Be Equal to States,” *Indian Country Today Media Network*, December 7, 2011, at <http://indiancountrytodaymedianetwork.com/article/fema-wants-tribes-to-be-equal-to-states-66244>.

¹⁷ Testimony of FEMA Administrator Craig Fugate, in U.S. Congress, Senate Committee on Indian Affairs, “Facing Floods and Fires—Emergency Preparedness for Natural Disasters in Native Communities,” 112th Congress, 1st Sess., July 31, 2011.

¹⁸ 42 U.S.C. §5122.

With this amendment, tribes are now equivalent to states in their ability to request a major disaster declaration or an emergency declaration from the President.

Tribes had sought this authority for various reasons. While tribes and Native Americans have long received assistance under Stafford Act declarations, working through the state government for all assistance has been viewed as an issue of tribal sovereignty. States might at times be reluctant to make a request on behalf of a tribe when the damage was localized on tribal property. Other challenges to administering disaster relief involved language barriers and the physical isolation of some tribal lands. Also, the tribes wished to have the same ability as states to help manage the response and recovery from a disaster. All of these factors created challenges for emergency management following disaster events in tribal areas.

Under the SRIA amendment (Sec. 1110) to the Stafford Act, the “Chief Executive of an Indian Tribal Government” is able to submit a request for a declaration by the President. In addition, the “Savings provision” of this section ensures that a tribal government is not prohibited from receiving assistance under a declaration made by the President at the request of the governor, if the President has not made a separate declaration for the tribal government. In effect, a tribal government will retain the ability to be treated as a local government in those situations.

In implementing this new provision, FEMA sent out guidance, along with a “Frequently Asked Questions” document and related information to assist tribes in participating in this process. FEMA also provided tribes with the FEMA template that is used by governors to generate and submit their requests for either a major disaster or an emergency declaration.¹⁹ In addition, FEMA reports that both headquarters and regional staff are involved in extensive outreach efforts across the nation to meet with tribes and discuss processes and other considerations as these new partnerships are established.

In the time since the passage of this authority in the SRIA legislation, there have been six major disaster declarations by the President made to five separate tribal authorities.²⁰

The Impetus for Reform

The broader question of how the federal disaster declaration process should work has come to the attention of Congress from time to time. Congress has requested reports from its investigative arms and investigated the process through panels that have, at various times, considered aspects of the disaster relief process.²¹ Various Administrations have also considered the process and FEMA’s role in it.

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

¹⁹ FEMA Form 010-0-13 (3/13), “Request for Presidential Disaster Declaration Major Disaster or Emergency,” Pub. No. 1660-009, expires 3/2015.

²⁰ As of this report, declarations had been made by the President for the Eastern Band of Cherokee Indians; Navajo Nation; Standing Rock Sioux Tribe; Karuk Tribe; and two separate declarations for the Santa Clara Pueblo. This information is available on the FEMA website Declarations page, <http://www.fema.gov/disasters>.

²¹ Platt, p. 266.

These criteria are not necessarily indicative of a state's ability to pay for the damage because they do not consider the substantial differences in states' financial capacities to respond when disasters occur. As a result, federal funds may be provided for some disasters when they are not needed—a result that would be inconsistent with the Stafford Act's intent.²²

Congressional interest in the declaration process is derived, in part, from the increased cost in emergency spending—a recurring subject for the appropriations committees when considering supplemental spending legislation.²³ One review of disaster funding, particularly supplemental appropriations, found that the great majority of DRF spending is related to the large, catastrophic events that meet the criteria established in the Stafford Act. These supplementals have been “driven” by the urgency of large natural disasters. As one report explains,

In the past, funds in the DRF were often depleted before the end of the fiscal year due to disaster assistance needs. When the account nears depletion, Congress usually provides additional funding through one or more supplemental appropriations. The need for additional funds is generally caused by a large-scale, major disaster such as Hurricanes Katrina or Sandy. In recent years, however, the need for assistance has been increasingly tied to a string of incidents as opposed to a single, large event.²⁴

A review of data for a seven-year period from 1988 to 1995 revealed that large expenditures, as funded by supplemental bills, relate to declarations issued for the largest events.²⁵ During this time period, disaster declarations were made for Hurricane Hugo, the Loma Prieta earthquake, Hurricane Andrew, the Midwest floods of 1993, and the Northridge earthquake. This trend continued with large supplemental funding bills for Hurricanes Katrina and Sandy. However, these were not the only events deemed worthy of presidential action and of cost to the federal treasury. As summarized by one author:

But like the tail of a comet, over 200 other declarations accounted for one quarter of such outlays, many of them of relatively minute cost and extent. While of lesser impact on the national treasury, such “low end” declarations have become, to some observers, new sources of federal spending at the local level, long referred to in other contexts as “pork barrel spending.”²⁶

Congress has taken a significant step to address disaster funding and establish a reliable budgetary process for it through the Budget Control Act (BCA). The BCA has put annual appropriations for the DRF at a higher level and also established a process that would permit allowable budget adjustments for disaster spending. But the Sandy experience also demonstrated that Congress was still willing to place some spending for catastrophic events outside of the budget process.²⁷ But regardless of the DRF's budget at any given time, an interest remains in how the declaration process works: its pace, its thoroughness, and its fairness.

²² U.S. Government Accountability Office, *Disaster Assistance: Improvements Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures*, GAO-01-837, August 2001, p. 2.

²³ For more information on emergency supplemental spending for disasters see CRS Report R43665, *Supplemental Appropriations for Disaster Assistance: Summary Data and Analysis*, by (name redacted) and (name redacted).

²⁴ CRS Report R43537, *FEMA's Disaster Relief Fund: Overview and Selected Issues*, by (name redacted).

²⁵ For more information, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by (name redacted).

²⁶ Platt, p. 10.

²⁷ For additional information see CRS Report R42352, *An Examination of Federal Disaster Relief Under the Budget Control Act*, by (name redacted), (name redacted), and (name redacted).

During early 2001, the term “entitlement” was beginning to be used in describing federal disaster spending by the new Bush Administration.²⁸ Underlining this thinking in his first appearance before the Senate Appropriations Committee, FEMA Director Joe M. Allbaugh explained:

FEMA is looking at ways to develop a meaningful and objective criteria for disaster declarations that can be applied consistently. These criteria will not preclude the President’s discretion but will help states better understand when they can reasonably turn to the federal government for assistance and when it would be more appropriate for the state to handle the disaster itself.²⁹

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

As Members representing real communities back home, we want to understand just how FEMA makes determinations regarding what is a disaster deserving of attention and when folks have to fend for themselves. Quite simply, we must have a serious discussion on what our expectations are of our federal government and what should remain a state and local responsibility.³⁰

In order to examine the process and the financial projections of disaster spending in particular, Congress mandated in P.L. 110-28, a 2007 supplemental appropriations bill, that GAO study how FEMA develops its estimates for supplemental funding that may be needed.³¹ Report language detailed these instructions for the review:

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

²⁸ Christopher Cooper and Robert Block, *Disaster—Hurricane Katrina and the Failure of Homeland Security* (Henry Holt and Company: New York, 2006), p. 71.

²⁹ U.S. Congress, Senate Committee on Appropriations, Subcommittee on VA, HUD, and Independent Agencies, *Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for Fiscal Year 2002*, 107th Congress, 1st sess., p. 252, at <http://www.access.gpo.gov/congress/senate>.

³⁰ Opening Statement of Rep. Bennie Thompson, in U.S. Congress, House Committee on Homeland Security, *Disaster Declarations, Where Is FEMA in a Time of Need?*, 110th Congress, 1st sess., March 15, 2007.

³¹ P.L. 110-28, 121 Stat. 155. This direction was contained in the “U.S. Troop Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act,” one of several that provided supplemental funding for Hurricane Katrina recovery activities.

recommendations regarding FEMA's ability to manage disaster-related resources in a manner that maximizes effective execution of its mission.³²

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

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

some of the factors that can lead to changes in FEMA's cost estimates are beyond its control, such as the discovery of hidden damage. Others are not, such as its management of mission assignments. Sensitivity analyses to identify the marginal effect of key cost drivers could provide FEMA a way to isolate and mitigate the effect of these factors on its early estimates. To better predict applicant costs for the Individual Assistance program, FEMA could substitute or add more geographically specific indicators for its national average.³³

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

Ranking Republican Mike D. Rogers of Alabama questioned the timeliness of FEMA's disaster declarations. Declarations that should take a few days often take a month or longer, and a lack of available information on the status of requests only adds to state officials' frustration, said Brock Long, director of Alabama's Emergency Management Agency. "When we make phone calls to the region or to headquarters, a lot of time the answer we get is 'the declaration request is in process' and that's it," Long said.³⁴

Recent articles have noted the increase in disaster declarations and have suggested that it may be a political decision that is placing more responsibility for response and recovery on the federal government while minimizing state responsibility. As one report noted:

FEMA spends too much time responding to routine natural disasters and not enough time preparing for catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, which could have a national impact. This is increasing the likelihood that the federal response to the next catastrophic event will be insufficient.

³² U.S. Congress, House Committee on Appropriations, *Making Emergency Supplemental Appropriations for the Fiscal Year Ending September 30, 2007, and Other Purposes, Report to Accompany H.R. 1591*, 110th Cong., 1st sess., March 20, 2007, H.Rept. 110-60, p. 211.

³³ Government Accountability Office, *FEMA Disaster Cost Estimates*, GAO-08-301, February 22, 2008, p. 4.

³⁴ Matt Korade, "FEMA's Success Hinges on Regional Personnel," *Congressional Quarterly*, March 16, 2010, at <http://www.cq.com/doc/hsnews-3569657?6>.

Congress should reduce the cost-share provision for all FEMA declarations to no more than 25 percent of the costs. This will help to ensure that at least three-fourths of the costs of a disaster are borne by the taxpayers living in the state where the disaster took place.³⁵

One difficulty in addressing such a recommendation is defining “routine natural disasters.” The nature of the disaster can depend on the location. From afar, the incident may seem marginal but up close it may appear catastrophic. The notion of “routine natural disasters” is also dependent on state and local resources and capacities. While the devolution of responsibility to state governments may prove effective in some states, it also may not be consistent. As one expert noted, some consistency in approach from the federal government is desirable.

Federal guidance, technical assistance and incentives aim at addressing these disparities. How would the public feel about having an uneven patchwork of state policies, practices and capabilities? Under state control and with all the financial pressures experienced by states, would we see a “race to the bottom” in disaster loss reduction programs?³⁶

The following section discusses similar proposals as the one mentioned above regarding FEMA disaster cost-shares, including one made by FEMA, and the reaction of Congress to that approach.

The Skepticism of Reform

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

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

One example, now in law, of the desire to reform but not obstruct the declaration process is in the Post-Katrina Emergency Management Reform Act (PKEMRA) of October of 2006. That statute created a new position at FEMA: the Small State and Rural Advocate.³⁷ One of the principal duties of the advocate is to ensure that the needs of smaller states and rural communities will be “met in the declaration process”; the advocate is also directed to “help small states prepare declaration requests, among other duties.”³⁸

³⁵ Matt A. Mayer, James Jay Carafano, and Jessica Zuckerman, “FEMA Reform and Disaster Response: Heritage Foundation Recommendations,” The Heritage Foundation, web memo, August 23, 2011, http://thf_media.s3.amazonaws.com/2011/pdf/wm3359pdf.

³⁶ Kathleen Tierney, “The U.S. Emergency Management System Is Not Perfect but It Works,” *The New York Times*, October 30, 2012.

³⁷ P.L. 109-295, 689g, 120 Stat. 1453.

³⁸ For more information see CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane* (continued...)

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

The proposal would have limited the number of future presidential declarations by establishing a "state deductible" based on a per capita minimum dollar amount adjusted by the ratio of the state/local price index to the national index. Of 111 declarations issued in prior years, 61 would have been ineligible for any public assistance. FEMA also proposed to decrease the federal share for disaster costs from 75 percent to 50 percent and to exclude aid to special districts.³⁹

The FEMA proposal of over 25 years ago addressed some of the problems identified by current critics of the declaration process. However, some Members of Congress viewed this proposal as a means of removing the power of discretion from elected leadership. Rather than apply the empirical solution suggested by FEMA to perceived problems in the declaration process, Congress instead legislated a provision to explicitly forbid the primacy of any "arithmetic formula."⁴⁰ In place of agreeing to the regulatory changes in the formula proposed by FEMA and the Administration, Congress added the following section to the Stafford Act:

Limitation on the Use of Sliding Scales. Section 320. No geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.⁴¹

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

While some public discussion involves consideration of ways to reduce the number of declarations it should also be noted that there are also some legislative initiatives that could increase the number of declarations while seeking more equity in the process. (See "Localized Impacts" in this report.)

Presidential, Gubernatorial, and Tribal Discretion

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

(...continued)

Katrina: A Summary of Statutory Provisions, coordinated by (name redacted).

³⁹ U.S. Congress, House Subcommittee on Investigations and Oversight, *The Federal Emergency Management Agency's Proposed Disaster Relief Regulations*, 100th Cong., 1st sess. (Washington: GPO, 1987), pp. 3-5.

⁴⁰ P.L. 100-707, November 23, 1988, 102 Stat. 4696.

⁴¹ 42 U.S.C. 5163.

Actions by a governor or tribal leader are a driving constant in this process. Both major disaster and emergency declarations must be triggered by a request to the President from the governor of the affected state or the tribal leader of the lands affected.⁴² The President cannot issue either an emergency or a major disaster declaration without a gubernatorial or tribal request. The only exception to this rule is the authority given to the President to declare an emergency when “he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States can exercise exclusive or preeminent responsibility and authority.”⁴³

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

The importance of governors or tribal leaders in the process is not lost on, nor would it likely be diminished by, Presidents who were formerly governors. Over the last three decades of Stafford Act implementation, four of the Presidents during this period were former governors who had worked through the disaster declaration process from both the state and the federal level.⁴⁴ Also, when considering the declaration process it should also be considered that tribes and state are responding to emergency and disaster events on a daily basis. Figures provided by the National Emergency Management Association (NEMA) show that states responded to 205 gubernatorial emergencies during FY2013 and 250 such events in FY2011. Those numbers are far in excess of the 62 federal major disaster declarations in 2013 and 99 declarations in 2011.⁴⁵

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

In other words, Congress likes to keep the process imprecise, even if benefits occasionally go to the undeserving. The absence of objective criteria preserves wide political discretion to the president.⁴⁶

Congress also has among its number former governors who have exercised this discretion at the state level. Still, despite the interest some may have in keeping “the process imprecise,” some

⁴² See 42 U.S.C. 5170 and 42 U.S.C. 5191.

⁴³ 42 U.S.C. §5191.

⁴⁴ President Carter (Georgia), President Reagan (California), President Clinton (Arkansas), and President George W. Bush (Texas).

⁴⁵ National Emergency Management Association, February, 2014.

⁴⁶ Platt, p. 20.

Members of Congress express disappointment at times with the exercise of the discretion and the general nature of the considerations. As noted previously in this report, that disappointment has been reflected in hearings that have focused on how the disaster declaration process works in practice.

In the declaration process, FEMA develops a recommendation that is sent to the White House for action. However, as implied, it is a recommendation from FEMA and the Department of Homeland Security (DHS). The final action, as stated in law⁴⁷ and defined in the regulations of the process, is a “Presidential determination.”⁴⁸ Just as the governor or tribal leader retains the discretion to request federal assistance regardless of thresholds or indicators, the President retains the discretion to make a decision that may be counter to recommendations he receives.

Politics and the Declarations Process

The number of major disaster declarations on average has been increasing over the last several decades. Between 1990 and 1999 there were 460 major disaster declarations. The next decade, from 2000 to 2009, the number of declarations increased to 568. Now, just four years into the next decade there have already been 307 declarations.⁴⁹ It is of interest that even during an era of constant public discussion of climate change and its impact and repercussions, often times the increased number of declarations is attributed to raw politics. As one expert opined

Politics appears to make a difference at the margins. Large disasters always receive federal aid, but political interests determine whether smaller states receive federal dollars or have to make due on their own. For example, in 1994, Bill Clinton refused to provide aid for recovery for floods that caused \$6.7 million damage on the South Side of Chicago. A year later, Clinton did provide aid to New Orleans, when a flood caused \$10 million in damage. The difference was that Illinois was considered a solidly democratic state and therefore not valuable to Clinton’s re-election efforts, whereas Louisiana was deemed a competitive state. Because natural disasters are so frequent, politicians in every part of the country use them to deliver federal aid.⁵⁰

Several points are interesting in the assumptions made referenced above. This assessment of how declarations are made does not include the various factors that are considered for either Public Assistance or Individual Assistance. These factors have been in regulation since 1999 and are discussed in more detail later in this report. Those factors, at base, consider the size and relative capacity of a state and local area. Rather than reviewing regulatory frameworks for disaster recommendations, the default assumption appears to be the primacy of politics.

⁴⁷ 42 U.S.C. 5170.

⁴⁸ C.F.R. 44 §206.38.

⁴⁹ This information is from the fema.gov website. Some totals mentioned in some reports are much higher. The disparity is that those reports usually conflate Fire Management Assistance Grants FMAGs, with Presidential actions. In fact, FMAGs are frequent, timely, and relatively small in cost. The decisions on those actions are made at the FEMA regional level in consultation with the governor of the affected state and regional U.S. Forest Service and FEMA HQ officials.

⁵⁰ Patrick Roberts, *Disasters and the American State* (Cambridge: 2013), p. 111.

Similar suggestions of political influence have been suggested by others. Two researchers asserted that presidential and congressional influence have an impact on the decisions for declarations and spending.

We find that presidential and congressional influences affect the rate of disaster declaration and allocation of FEMA disaster expenditures across states. States politically important to the President have a higher rate of disaster declaration by the President, and disaster expenditures are higher in states having congressional representation on FEMA oversight committees.⁵¹

While those findings comported with suspicions or assumptions of political corruption of the disaster declaration process and disaster spending, follow-up studies have questioned those assumptions. As two other researches have noted:

There was no statistical evidence to suggest that gubernatorial and presidential party similarity, U.S. House of Representatives and presidential party similarity, FEMA congressional oversight committee membership, electoral votes, or FEMA regional office location influenced success in securing emergency or major disaster declarations.⁵²

Another researcher who has closely followed disaster declaration activity noted the declining rate of turn-downs for governors' requests and concluded:

Since 1989, following adoption of the Stafford Act, the odds that the president will approve a governor's request have risen to about four in five (80.3 percent) chance. Certainly the broader authority to judge what is or is not a disaster under the Stafford Act has provided presidents since 1988 with more latitude to approve unusual or "marginal" events as disasters or emergencies. This may be one reason for the higher rate of gubernatorial request approvals since 1988.⁵³

An additional reason for the increase in approvals may also rest with the increasing capacity of states to make effective requests; states continue to better understand FEMA's review process, based on regulations in place, and can anticipate what would likely constitute a request that would result in a declaration. This is in part a testament to the growing maturity and sophistication of the emergency management area as a field of study and profession. It may also be a reflection of the ongoing relationship between state and tribal emergency management offices and FEMA regional offices that may provide states and tribes with a better understanding of what may or may not constitute a successful request.

Preliminary Damage Assessments

Although not explicitly mentioned in the Stafford Act, Preliminary Damage Assessments (PDAs) are a crucial part of the process of determining if an event may be declared a major disaster by the President. The minimal discussion of PDAs in the public record stands in inverse proportion to

⁵¹ Thomas A. Garrett and Russell S. Sobel, "The Political Economy of FEMA Disaster Payments," *Economic Inquiry*, Vol. 41, No. 3, July 2003, pp. 496-509, <http://onlinelibrary.wiley-can/doi/10.1093/ei/cbg023/pdf>.

⁵² Richard S. Salkowe and Jayajit Chakraborty, "Federal Disaster Relief in the U.S.: The Role of Political Partisanship and Preference in Presidential Disaster Declarations and Turndowns," *Journal of Homeland Security and Emergency Management*, Vol. 6, Issue 1, Article 28, 2009.

⁵³ Richard Sylves, *Disaster Policy and Politics* (Washington, DC: CQ Press, 2008), p. 100.

their impact on disaster decisions and subsequent expenditures from the Disaster Relief Fund (DRF).

When a PDA is conducted after an event it is the “mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole.”⁵⁴ The most “preliminary” part of a PDA may be an abbreviated one completed only by the state to determine if the situation merits development of a complete PDA with federal participation. Based on their previous experience, states may determine that the event will not reach the level where a federal disaster declaration is likely. However, despite findings that federal aid may not be needed, there may be political considerations that could lead to a gubernatorial request. As one author points out in his study of the process:

Governors also feel the heat of media coverage of incidents in their states, and they too appreciate the importance of exhibiting political responsiveness. Governors also appreciate that their future political fortunes may be influenced by how they handle their disaster and emergency incidents. As a consequence, the hypothesis assumes that governors are the pivotal and decisive players in securing presidential disaster declarations and that they have a tendency to request declarations for even marginal events.⁵⁵

While media and political pressure may have some influence on the outcome of some requests, governors may exercise caution since they are reluctant to be turned down when requesting aid. Though it may be possible, from a denial of assistance, to project on to the federal government a callousness or lack of understanding of the situation there are still negative connotations for governors as well. A denial of the request could also be perceived by some to reflect adversely on a governor’s decision-making skills and judgment under pressure. Unlike the procedures of the federal process, a governor’s decision to request a declaration can be a public and often newsworthy action.

Regardless of any question regarding motivation, the governor’s or tribal officials’ first decision is whether the incident is severe enough to assemble a traditional PDA team to survey the damaged area. The traditional PDA team includes a state official, representatives from the appropriate FEMA regional office, a local official familiar with the area, and, in some instances, representatives from the American Red Cross and/or the Small Business Administration. The FEMA representatives have the responsibility of briefing the team on the factors to be considered, the information that will be helpful in the assessment, and how the information should be reported. One significant improvement in this process is that the regulations now require that the participants reconcile any differences in their findings.⁵⁶ FEMA also makes available the template that is used in assessing disaster damage. (See the **Appendix** of this report.)

Another factor is the quality of the PDA team and its findings. PDAs are ordered up quickly after an event. FEMA’s 10 regional offices are often engaged in multiple disasters and have to rely on temporary employees (albeit, usually experienced ones) to staff the PDA team.⁵⁷ Also, given the

⁵⁴ C.F.R. 44 §206.33.

⁵⁵ Richard Sylves, Quick Response Report #86: *The Politics and Administration of Presidential Disaster Declarations: The California Floods of Winter 1995*, at <http://www.colorado.edu/hazards/research/qr/qr86.html>.

⁵⁶ 44 C.F.R. §206.33(c).

⁵⁷ FEMA has 10 regional offices: Region 1 (Boston, MA), Region 2 (New York, NY), Region 3 (Philadelphia, PA), Region 4 (Atlanta, GA), Region 5 (Chicago, IL), Region 6 (Denton, TX), Region 7 (Kansas City, MO), Region 8 (Denver, CO), Region 9 (Oakland, CA), and Region 10 (Bothell, WA).

variables among regions in interpreting policy and guidance, consistency of approach may also be a question. This became a significant issue during the hurricane season of 2004 in Florida, where questions were raised regarding the designations of some counties.⁵⁸

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

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

‘The PDA teams look at the total scope of damage to establish if recovery is beyond the capabilities and resources of the state and local governments. The PDA doesn’t determine the total cost of recovery, nor does it guarantee a presidential declaration for individual assistance,’ said FEMA Regional Director Susan Reinertson.⁵⁹

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

Another challenge noted by FEMA is the tendency of some states to suspend the PDA when the state believes they have documented the necessary amount of damage to warrant a declaration. Such a finding may lead to a declaration but also provides an incomplete portrait of the extent of damages and arguably of the types of assistance needed for the response and recovery process.⁶⁰

Although PDAs are the usual way damages are assessed, there are exceptions to this rule. Some incidents are so massive in their scale and impact that the actual declaration is not in doubt. This would include events such as Hurricanes Katrina and Sandy, the Loma Prieta and Northridge earthquakes, the Mount St. Helens volcanic eruption, and the September 11 terrorist attacks. In these instances, the decision is not whether a declaration will be made, but how broad the coverage will be, both geographic and programmatic. In such cases the President, in accordance with the regulations, can waive the PDA requirement. But as the regulations note, a PDA may still be needed “to determine unmet needs for managerial response purposes.”⁶¹ This means the PDA helps to identify a specific, potential need for certain programs, such as crisis counseling or

⁵⁸ Sally Kestin and Megan O’Matz, “FEMA Ruled on Disaster Before Verifying Dade Damage,” *South Florida Sun-Sentinel*, at http://www.sun-sentinel.com/news/sfl-fema15may15_0,6848867.story?coll=sfla-news-utilities.

⁵⁹ U.S. Department of Homeland Security, Federal Emergency Management Agency, “Joint State-Federal Preliminary Damage Assessment Teams Visit Flood-Damaged Communities,” Release Number R10-06-047, November 13, 2006, at <http://www.fema.gov/news/newsrelease.fema?id=31509>.

⁶⁰ Memo from FEMA Office of Legislative Affairs, September 22, 2014.

⁶¹ 44 C.F.R. 206.33(d).

disaster unemployment assistance during the disaster recovery period. It is this identification of discrete need that helps the governor decide on which assistance programs will be requested.

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

The president, motivated by the need to appear highly politically responsive, solicits and encourages a gubernatorial request for a presidential disaster declaration. Publicity is a factor in that CNN and other news organizations help to promote nationally what would otherwise be a local incident addressed by subnational authorities. The president may also be influenced by the electoral importance of the state that experiences the incident.⁶²

It is difficult to overstate the importance of the media context as noted above. Depending on the news of the day, the disaster event in question may be the biggest national story and thus create momentum for action that is difficult to assuage with explanations of traditional administrative procedures. But regardless of the perceptions of political motivation, or intense media scrutiny, there are actual factors listed in regulations for assessing whether a state should receive a major disaster declaration.

Factors Considered for Public Assistance in Major Disaster Declarations

Public Assistance (PA) refers to various categories of assistance to state and local governments and non-profit organizations. Principally, PA covers the repairs or replacement of infrastructure (roads, bridges, public buildings, etc.) but also includes debris removal and emergency protective measures which may cover additional costs for local public safety groups incurred by their actions in responding to the disaster.⁶³ In assessing the degree of PA damage, FEMA considers six general areas:

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

⁶² Sylves, p. 5.

⁶³ U.S. Department of Homeland Security, Federal Emergency Management Agency, “Categories of Work,” <http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit/categories-work#catB>.

Estimated Cost of the Assistance

Although all of these factors are considered, the *estimated cost of the assistance* is a key component and may be “more equal” than other factors since it contains a threshold figure. What is especially noteworthy about the cost estimates is that they could be interpreted as an example of the “arithmetic formula” that was precluded from use in Section 320 of the Stafford Act. However, that section states that a formula cannot be “solely” determinative of the fate of a governor’s request. Use of the other factors listed arguably justifies FEMA’s consideration of the threshold figure of \$1 million in PA damage—the first number FEMA expects to see in a request that includes PA as an area of needed assistance. In addition, FEMA also considers a state-wide threshold of \$1.39 per capita in estimated eligible disaster costs before it will approve a request for PA help.⁶⁴

Depending on the state’s population, the per capita threshold may be difficult to reach. For example, the 2010 Census estimated California’s population at just under 38 million people.⁶⁵ Applying the \$1.39 per capita figure, it would require eligible PA damage in California to be close to \$48 million before federal supplemental assistance would be available through a declaration. California is a large state with a budget and tax base commensurate with its size. Expecting a large state to be able to respond on its own is equating such help, and such amounts, to be within “the capabilities of the state”⁶⁶ That is the prime Stafford Act definition of when federal help is necessary.

Compare that level of eligible damage for California (\$48 million) with Nevada, a small population state according to FEMA regulations.⁶⁷ For Nevada, with a population of about 2.7 million people according to the 2010 Census, eligible PA damage of about \$3.5 million would make the state potentially eligible for supplemental federal assistance.

There are obvious differences in the populations of these two states; however, both have substantial industries and are growing areas. They are states that border one another and both are subject to the threat of earthquake damage.⁶⁸ Different measurements have been suggested to try to capture a state’s capacity to respond to disaster events more accurately. Some of these measurements are discussed in the “Congressional Considerations for the Declaration Process” section of this report.

Localized Impacts

The next factor used by FEMA to consider a declaration that may include PA help focuses on *localized impacts*. FEMA generally looks for a minimum of \$3.50 per capita in infrastructure damage in a county before designating it for PA funding.⁶⁹ While such a per capita amount would

⁶⁴ U.S. Department of Homeland Security, Federal Emergency Management Agency, “Notice of Adjustment of Statewide Per Capita Impact Indicator,” 78 *Federal Register*, 64231, October 28, 2013.

⁶⁵ U.S. Census Bureau, *State and County Quick Facts*, at <http://quickfacts.census.gov/gfd/states/06000.html>.

⁶⁶ 42 U.S.C. §5170.

⁶⁷ 44 C.F.R. §206.48.

⁶⁸ U.S. Geological Survey, Earthquake Hazards Program, “Earthquake Density Maps for the United States,” at http://earthquake.usgs.gov/regional/states/us_density.php.

⁶⁹ U.S. Department of Homeland Security, Federal Emergency Management Agency, “Notice of Adjustment of Countywide Per Capita Impact Indicator,” 78 *Federal Register*, 64232, October 28, 2013.

likely ensure that the local entity (almost always a county) would be included in the list of jurisdictions designated for PA assistance should a declaration be issued, high local levels of damage per capita would not supersede a finding that damages state-wide fell below the state-wide threshold amount. However, knowledge of a very large localized impact could weigh on the President's discretion and raise the importance of the *localized impact* factor.

This issue has been addressed by recent legislation introduced in the House and Senate in the 113th Congress. These bills seek to make localized impact “more equal” than other factors similar to the position now occupied by state per capita “Estimated Cost of Assistance.” The legislation suggests assigning a percentage weight to each factor considered. While six other factors in the proposed legislation receive 10% consideration, the “Localized Impact” factor is worth 40% when determining whether a disaster declaration for Public Assistance is warranted.⁷⁰ This would be particularly helpful to local communities in large states where it is difficult to meet the “estimated cost” threshold. By shifting the greater consideration to localized damage amounts, those areas could potentially bolster a state or tribal request.

Similarly, other legislation (H.R. 1859) has been introduced that would direct FEMA to consider all factors as equal to the cost-estimate information. This legislation would also direct FEMA to develop regulations which would not consider the state threshold amount when a disaster event occurs within a smaller jurisdiction with significant per capita damage.⁷¹

Reflecting this interest in localized impacts, the report accompanying the House Appropriations Committee legislation for DHS for FY2015 notes:

Although FEMA may consider the localized impacts of a disaster when recommending a disaster declaration to the President, the Committee is aware of concerns that, in practice, FEMA primarily relies on the state-wide damage threshold, which will be higher for more populous states even if the local impacts of a disaster may be relatively severe. To address these concerns, the Committee directs FEMA to review its disaster declaration recommendation process, including a review of how to more deliberately incorporate into the process the “localized impacts” factor outlined under Title 44, Part 206.48 of the Code of Federal Regulations.⁷²

Insurance Coverage

Insurance coverage also is considered in assessing damage. Officials preparing PA estimates deduct the amount of insurance that should have been held by units of governments and non-profit organizations from the total eligible damage amount. However, this is a complicated assessment with several caveats. A considerable number of states and local governments “self-insure” their investments against some types of disasters and may argue that they would have total liability absent a federal disaster declaration.⁷³ Also, in the event of some disasters (earthquakes being a prime example), the state insurance commissioner must certify that hazard

⁷⁰ S. 1960 and H.R. 3925, “Fairness in Federal Disaster Declaration Act of 2014,” were introduced in January 2014.

⁷¹ H.R. 1859, “Disaster Declaration Improvement Act,” was introduced in May, 2013.

⁷² Department of Homeland Security Appropriations Bill, 2015, full committee print, 113th Cong. 2nd Sess. H.Rept. 113-481 to accompany H.R. 4903, p. 106.

⁷³ For information on public insurance coverage, see “Cost of Risk Survey” conducted by the Public Entity Risk Institute (PERI) at <http://www.riskinstitute.org>.

insurance is both available and affordable. If it is not available, deducting an amount of coverage not realistically available would not be a practical consideration.⁷⁴

In the case of a flood event, it is much simpler for FEMA to access information available on whether flood insurance was available, given that FEMA administers the National Flood Insurance Program (NFIP) and there are program staff in each FEMA region that monitor NFIP participation. This knowledge of flood insurance availability and costs makes it a simpler process for FEMA to deduct the amount of flood insurance that should have been in place from the total potential award for a public structure.⁷⁵

Hazard Mitigation

Hazard mitigation presents a challenging and different type of consideration for Public Assistance disaster declaration requests. If the requesting state can prove that their per capita amount of infrastructure damage falls short due to mitigation measures that lessened the disaster's impact, FEMA will consider that favorably in its recommendation to the President. Calculations of savings would be dependent on cost-benefit analysis and other related estimates of damages that were avoided. This factor is intended to encourage mitigation projects by states to lessen the risks of future natural disasters. Some might consider this practice to be one where "a good deed *should* go unpunished." However, another factor to be considered is that the mitigation work that is credited to the state may have, in fact, been principally financed (up to 75% of the costs) with previous FEMA disaster assistance funding through the Hazard Mitigation Grant Program (HMGP) or through the Pre-Disaster Mitigation (PDM) program.⁷⁶

Recent Multiple Disasters

Recent multiple disasters is the factor FEMA considers when a state has been repeatedly hit by disaster events (either presidential declarations or events within the state that were not declared) within the previous 12 months. FEMA evaluates the amount of funds that the state has committed to these recent events and their impact on the state and its residents. For example, a request from a state that has responded on its own to a series of tornadoes may receive a more favorable consideration, even if the catalyst for the request was arguably not as destructive as others. This factor was used in FEMA's assessment of the multiple hurricanes that struck Florida during the 2004 hurricane season. (The frequency of such events is discussed in the "Presidential, Gubernatorial, and Tribal Discretion" section of this report.)

Other Federal Programs

When FEMA is reviewing a governor's request it is also considering whether *other federal programs* are available. One example might be if a large amount of the reported damage occurred to federal-aid-system roads. The Federal Highway Administration (FHWA) is a more appropriate agency to handle such an event, and administers programs that address this specific type of

⁷⁴ 44 C.F.R. §206.253. For additional information, see CRS Report RS22945, *Flood Insurance Requirements for Stafford Act Assistance*, by (name redacted).

⁷⁵ 44 C.F.R. §206.252.

⁷⁶ 42 U.S.C. §5170c and 5133.

damage.⁷⁷ The bridge collapse in Minnesota in August of 2007 was a dramatic example of this type of event that would warrant significant, non-FEMA, federal aid. Similarly, other federal programs may be more responsive to certain types of natural events and the problems they create. For example, oceanic bacteria could cause harmful failures for the fishing and hatcheries industry. Should such outbreaks occur, the Magnuson-Stevens Fisheries Act (P.L. 94-265) authorizes programs under the Commerce Department that would have more appropriate forms of emergency assistance for commercial fishermen than FEMA through the Stafford Act.⁷⁸ Also, while drought is a type of disaster that could result in a major disaster, such catastrophes usually result in program assistance from the U.S. Department of Agriculture rather than presidential declarations.⁷⁹

In summary, all of these factors are used by FEMA to determine whether a major disaster declaration will be recommended and whether PA aid will be extended as a part of that potential declaration. The assistance to repair public infrastructure is based on the amount of eligible damage caused by the disaster event. Unlike aid to households, there is no cap, and the sums can be in the billions of dollars. The restraint on PA spending is that all repairs or rebuilding projects must be due to damage caused by the particular disaster event. Additionally, the state, tribe, or local government must be able to pay its 25% share of the costs.⁸⁰

Factors Considered for Individual Assistance in Major Disaster Declarations

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

- Concentration of damages;
- Trauma;
- Special populations;
- Voluntary agency assistance;
- Insurance coverage; and
- Average amount of Individual Assistance by state.

⁷⁷ For more information, see CRS Report R43384, *Emergency Relief for Disaster Damaged Roads and Transit Systems: In Brief*, by (name redacted).

⁷⁸ For additional discussion of this law, see CRS Report RL34209, *Commercial Fishery Disaster Assistance*, by (name redacted).

⁷⁹ For more information, see CRS Report RS21212, *Agricultural Disaster Assistance*, by (name redacted). Also see CRS Report R43594, *Analysis of Senate-Passed S. 2198: Emergency Drought Relief Act of 2014*, by (name redacted) and (name redacted).

⁸⁰ For further discussion see CRS Report R41101, *FEMA Disaster Cost-Shares: Evolution and Analysis*, by (name redacted).

The SRIA included specific instructions to FEMA to update the factors considered for Individual Assistance.⁸¹ One significant argument for mandating such a review of IA factors is that these factors have not been adjusted since they first appeared in regulation in 1999. FEMA is to undertake this review in cooperation with representatives of state, tribal, and local emergency management agencies. The intent of the section is to speed up the declaration process through this review.⁸² As of this date, FEMA has noted that it expects to begin the rulemaking process, regarding IA factors, during 2014.⁸³

Concentration of Damages

Concentration of damages looks at the density of the damage in individual communities. FEMA's regulations state that highly concentrated damages "generally indicate a greater need for federal assistance than widespread and scattered damages throughout a state."⁸⁴ Concentrated damages are far more visible and may be an indication of significant damage to infrastructure supporting neighborhoods and communities, thereby increasing the needs of individuals and families.

However, the dispersion of damage is not necessarily an indication that individual and family needs are non-existent. Damage in rural states, almost by definition, is far less concentrated and could arguably be more difficult for a PDA team to view and assess. Congress has sought to address this challenge through the creation of the Rural and Small State advocate position at FEMA.⁸⁵ Another consideration is that given the legislation that has attempted to give more weight to "Localized Impacts" under Public Assistance, this factor may take on increased importance.

Trauma

Trauma is defined in three ways in FEMA's regulations: the loss of life and injuries, the disruption of normal community functions, and emergency needs that could include an extended loss of power or water.⁸⁶

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

An extreme amount of losses would be traumatic and considered in the evaluation of the governor's request. But the actual help available from FEMA in response to such losses is limited. The Other Needs Assistance (ONA) program, a part of the Individuals and Households Program (IHP), may provide assistance for uninsured funeral expenses and medical help.⁸⁷

⁸¹ P.L. 113-2, Section 1109.

⁸² For further discussion of this provision see CRS Report R42991, *Analysis of the Sandy Recovery Improvement Act of 2013*, by (name redacted), (name redacted), and (name redacted).

⁸³ DHS/FEMA, Sandy Improvement Act of 2013, Program Update, March 2014, <https://www.fema.gov/about-agency/sandy-recovery-improvement-act-2013>. Status confirmed October 17, 2014.

⁸⁴ 44 C.F.R. §206.48(b)(1).

⁸⁵ P.L. 109-295, §689g, 120 Stat. 1453.

⁸⁶ 44 C.F.R. §206.48(b)(2).

⁸⁷ 42 U.S.C. §5174.

As noted, the extreme loss of life or many injuries will likely influence the amount of media coverage for the event. As previously explained in the “Presidential, Gubernatorial, and Tribal Discretion” section of this report, the media coverage can influence not merely the pace of the decision, but the actual decision itself.⁸⁸

The other areas (disruption of functions and loss of utilities) in the trauma rubric can be a point of dispute in declaration decisions. What constitutes a disruption of normal community functions? Do road closures that result in the closing of schools equate to a disruption? Another consideration is how long the disruption remains and how, or even if, federal help can alleviate the disruption. Similarly, the emergency needs due to the loss of utilities are defined by the length of time the power or water are not in service. Because characteristics of these factors are not defined in regulations, discretionary judgments are significant aspects of the evaluation of IA needs.

As noted previously, the Sandy Recovery Improvement Act directed FEMA to update its IA factors. That provision, Section 1109, directed FEMA to give special attention to the second factor, Trauma, when considering the “severity, magnitude, and impact of a disaster.” This gives added significance to this factor and to FEMA’s treatment of it when updating the IA factors. FEMA’s report on the status of the update is that it “is drafting regulatory text for a Notice of Proposed Rulemaking with anticipated publication no earlier than 2014.”⁸⁹

Special Populations

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

Voluntary Agency Assistance

Voluntary agency assistance involves an evaluation of what the volunteer and charitable groups and state, tribal, and local governments have already done to assist disaster victims as well as the potential help they can offer in the recovery period. FEMA also considers whether state, tribal, or local programs “can meet the needs of disaster victims.”⁹⁰ This factor is among the most contentious in the disaster declaration process due to the subjectivity of the assessment.

⁸⁸ Richard Sylves, Quick Response Report #86: *The Politics and Administration of Presidential Disaster Declarations: The California Floods of Winter 1995*, at <http://www.colorado.edu/hazards/research/qr/qr86.html>.

⁸⁹ Report from FEMA’s Office of Legislative Affairs, May 13, 2014. This information was confirmed as still accurate by that office on October 17, 2014.

⁹⁰ 44 C.F.R. §206.48 (b)(4).

FEMA's evaluation of local and state capabilities, and the capabilities of the local voluntary community, may vary greatly among catastrophes. There is an expectation that the FEMA regional office's relationship and history with the state or tribe could provide some of this information. But a cursory look at state programs available to "meet the needs of disaster victims" suggests that few resources are comparable to federal help in intent or in scope. A National Emergency Management Association (NEMA) survey of its members for state-funded disaster assistance showed that relatively few states provide assistance beyond that authorized in the Stafford Act. **Table 1** summarizes data from that survey. Since 2010 five fewer states have a PA program in place but one additional state provides a form of IA assistance.

Table 1. Types of State-Funded Disaster Assistance

Assistance Provided	Number of States with These Programs
Public Assistance Program	17
Individual Assistance Program	10
Other	10

Source: National Emergency Management Association, May 2014.

NEMA noted that the "other" category can include varied forms of state contingency funds and authorities. The small numbers of programs directed at IA suggests that FEMA officials evaluate this area carefully given the lack of information regarding available resources for these programs and the extent of their coverage.⁹¹

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

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

Too low a threshold reinforces the perception that the federal government will always come like the cavalry to rescue states and local governments from their improvident failure to prepare for routine disasters. Lapses in preparedness, response, recovery, and mitigation (to

⁹¹ For more information on state assistance programs, refer to the following for summary information on state statutory authorities: CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by former CRS specialist (name redacted), L. Cheryl Runyon, and Kae M. Warnock. (RL32287 is out of print but available from CRS upon request.)

cite the disaster management litany) should not be encouraged by a too readily available bailout by the federal government and taxpayers.⁹²

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

Insurance Coverage

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

... each federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.⁹³

This provision does not necessarily result in delayed assistance. FEMA is able to provide help to individuals and households that have disaster damages but are waiting on insurance or other assistance for help. Those applicants can receive FEMA help as long as they agree to reimburse FEMA when they receive their other assistance.⁹⁴ If a disaster occurred where almost all of the damaged dwellings were fully insured for the damage that was sustained, FEMA could conclude that a disaster declaration by the President was not necessary. Among the types of disasters FEMA frequently responds to, tornado disasters particularly reflect this challenge since tornado coverage is a part of most homeowners insurance policies.

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

The good news is that most individuals are very likely insured against many natural disasters already just by owning a homeowners insurance policy. The bad news is that if the home is located in a flood prone area or in an area of the country where earthquakes are relatively common, then purchasing insurance against these disasters is necessary.⁹⁵

Average Amount of Individual Assistance by State

The last factor FEMA considers in assessing IA needs is the *average amount of Individual Assistance by state*. FEMA has issued statistics on average losses but notes that the average

⁹² Platt, p. 65.

⁹³ 42 U.S.C. §5155.

⁹⁴ 42 U.S.C. 5155 (b)(1).

⁹⁵ "Disaster Insurance," *Money-zine*, <http://www.money-zine.com/financial-planning/buying-insurance/disaster-insurance>.

numbers used are not a threshold (see **Table 2**). The agency does suggest that the “following averages may prove useful to states and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.” The inference is that the levels listed generally are what would be expected in damage to dwellings. It is based on the age of these averages that SRIA directed FEMA to update the factors.

The average numbers that follow are based on disasters that occurred between July of 1995 and July of 1999; the data are 10 years old and of questionable use today. The table divides states into three categories: small states (under 2 million in population), medium states (2 to 10 million in population) and large states (over 10 million in population). The population amounts are based on the 1990 Census.

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

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

Source: 44 C.F.R. §206.48(b)(6).

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

In addition to the issue of the data’s currency, a larger and more compelling question is whether the numbers in the chart match up to the Preliminary Damage Assessments (PDAs) for those events. Absent an existing review of detailed information in PDA forms, it is not possible to determine the usefulness of the data in **Table 2**.⁹⁶ Still, with the level of experience in this field following literally thousands of disaster declarations over the last 30 years, it could be argued that the numbers of eligible households assisted may reflect the estimated damage upon which the decision for a disaster declaration was made.

⁹⁶ This statement remains accurate. However, since FEMA has begun to list PDA information on its website, it should be possible to begin to assess the efficacy of the factors employed to determine IA damage and declaration criteria.

Congressional Considerations for the Declaration Process

While Congress reviews the mandated GAO reports, the instructions in the SRIA legislation and other commentary on the declaration process, there are some considerations that Members may wish to review when assessing the current declaration process.

The Composition of Preliminary Damage Assessment Teams

One area of consideration is the composition of Preliminary Damage Assessment teams. Team members are involved throughout the process and include local officials guiding the team, state, or tribal personnel who assist the governor or tribal leader in requesting assistance, and FEMA staff who work on the disaster, if one is declared. While FEMA staff have the opportunity at several levels to refine the information the team gathers on damages and to ask additional questions, the process could be approached in other ways. Some FEMA staff have suggested the formation of several permanent teams that would have PDAs as their prime job task without continuing involvement in particular disasters. This could result in more consistent assessments with the bonus of added perspective of team members with exposure to various disasters in many regions of the country.

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

Updating and Revising Individual Assistance Averages

As previously noted, the averages that appear in FEMA's declaration process regulations for Individual Assistance (IA) to states are derived from experiences from July 1995 to July 1999.⁹⁷ Based on the post-Hurricane Sandy legislation (SRIA), FEMA was instructed to update IA factors so it is likely that these figures will be updated based on FEMA's more recent experience in delivering this type of assistance.⁹⁸

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

Other Potential Disaster Indicators

The current per capita indicator based on state population according to the U.S. Census is clear, but some observers believe it lacks precision. For example, the earlier discussion on PA indicators pointed out the commonality between California and Nevada regarding earthquake risk as well as

⁹⁷ 44 C.F.R. §206.48.

⁹⁸ P.L. 113-2, Section 1109, 127 Stat. 47.

the growth of the states. Their population sizes are very different but the per capita indicator alone does not necessarily measure a state's fiscal capacity.

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

We have previously reported that Total Taxable Resources (TTR), a measure developed by the U.S. Department of Treasury, is a better measure of state funding capacity in that it provides a more comprehensive measure of the resources that are potentially subject to state taxation.⁹⁹

FEMA's response to this suggestion questioned whether the use of TTR would be in violation of the legislative prohibition against arithmetic formulas.¹⁰⁰ The TTR does have very specific information and also tracks growth within a state. However, this appears to make it a more accurate measurement. The degree of detail in the measurement would not necessarily make it the "sole" determinant of disaster aid. It could remain an indicator and one among several factors to be considered in the declaration process.

Concluding Observations

The disaster declaration process, though subject to inquiry, argument, hearings, studies, and recommendations, has changed very little over time. It remains a process that can be observed and evaluated as it occurs in the area affected by the disaster, and grows opaque as it moves up through layers of FEMA and DHS management to the White House. By making PDA information available, FEMA has begun to lift the veil on the decisions that are made.

Congress has demonstrated an interest in this process and has sought to understand its limits and its effectiveness. "From the Government Accountability Office in 1981 to Vice President Gore's National Performance Review in 1994," one student of the process noted, "countless policy critiques have called for more objective criteria for presidential disaster declarations."¹⁰¹ But those calls can be muted when a disaster occurs in a particular place that has particular importance to actors in the process, whether in Congress or the executive branch.

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

⁹⁹ U.S. Government Accountability Office, *Disaster Assistance: Improvement Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures*, GAO-01-837, August 2001, p. 11.

¹⁰⁰ *Ibid.*, p. 49.

¹⁰¹ Platt, p. 285.

During the last Congress, attention was directed to the nature of the disaster declaration process. The 113th Congress has seen legislation introduced that has focused on local impacts over state capacity. In considering such legislation, Congress may choose to engage a broad review of the process that might include the consistency of FEMA's approach across the nation in making damage assessments, other potential indicators of state capabilities and capacities, and the currency of the factors it employs to evaluate those assessments of disaster damage and the state requests on which they are based.

Appendix. PDA Template

Preliminary Damage Assessment Report

(All of the PDA Information comes from FEMA's Preliminary Damage Assessment Report to Congress, 2013)

**//////// - ///Incident Type///
FEMA-////-DR**

Declared Month //, 20//

On //////////, Governor (first name, middle initial if applicable, last name/Tribal Executive Title) requested a major disaster declaration due to ////////// during the period of //(incident date) or beginning on (incident date), and continuing//. The Governor/Tribal Executive Title requested a declaration for //(programs) for //(number) counties and //Hazard Mitigation for the entire State of //(or as it states in the Memo/Tribe name). During the period of // (date of PDA)////, joint federal, state (*delete for Tribe*), and local government (or tribal) Preliminary Damage Assessments (PDAs) were conducted in the requested counties/areas (*for tribe*) and are summarized below. PDAs estimate damages immediately after an event and are considered, along with several other factors, in determining whether a disaster is of such severity and magnitude that effective response is beyond the capabilities of the state (*tribe*) and the affected local governments, and that Federal assistance is necessary.¹⁰²

On //////////////, President Obama declared that a major disaster exists in the State of // (for the *Tribe name*). This declaration made //Individual Assistance if granted//// requested by the Governor available to affected individuals and households in ////////////// Counties/Areas. This declaration also made //Public Assistance if granted//// requested by the Governor/Tribal Executive available to state/the *Tribe name* and eligible local governments/*associated lands* and certain private nonprofit organizations on a cost-sharing basis for emergency work and the repair or replacement of facilities damaged by the //incident type// in ////////////// Counties. //if granted//Direct Federal assistance was also authorized.// Finally, this declaration (or if HM and one other) //This declaration also// made Hazard Mitigation Grant Program //if granted//// assistance requested by the Governor/Tribal Executive available for hazard mitigation measures //statewide or list specific counties//(for the *Tribe name*).¹⁰³

¹⁰² The Preliminary Damage Assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and resulting needs of individuals, businesses, public sector, and community as a whole. Information collected is used by the State as a basis for the governor's request for a major disaster or emergency declaration, and by the President in determining a response to the governor's request (44 C.F.R. §206.33).

¹⁰³ When a governor's request for major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act) is under review, a number of primary factors are considered to determine whether assistance is warranted. These factors are outlined in FEMA's regulations (44 C.F.R. §206.48). The President has ultimate discretion and decision making authority to declare major disasters and emergencies under the Stafford Act (42 U.S.C. §5170 and §5191).

Summary of Damage Assessment Information Used in Determining Whether to Declare a Major Disaster

*Individual Assistance - (Not requested) *delete if requested*

- Total Number of Residences Impacted:¹⁰⁴ /////
- Destroyed - ///
- Major Damage - /////
- Minor Damage - ////////
- Affected - ////////
- Percentage of insured residences:¹⁰⁵ (//%)
- Percentage of low income households:¹⁰⁶ (//%)
- Percentage of elderly households:¹⁰⁷ (//%)
- Total Individual Assistance cost estimate: \$//////////

*Public Assistance - (Not requested) *delete if requested*

- Primary Impact: ///List Primary Infrastructure Impact///
- Total Public Assistance cost estimate: \$//////////
- Statewide per capita impact:¹⁰⁸ \$//////// (Delete statewide title for tribe)
- Statewide per capita impact indicator:¹⁰⁹ \$1.39 (Delete statewide title for tribe)
- Countywide per capita impact: //////// County (\$////////)
- //////// County (\$////////)
- //////// County (\$////////)
- //////// County (\$////////) (Delete for tribe)
- Countywide per capita impact indicator:¹¹⁰ \$3.50 (Delete for tribe)

¹⁰⁴ Degree of damage to impacted residences:

- Destroyed: total loss of structure, structure is not economically feasible to repair, or complete failure to major structural components (e.g., collapse of basement walls/foundation, walls or roof);
- Major Damage: substantial failure to structural elements of residence (e.g., walls, floors, foundation), or damage that will take more than 30 days to repair;
- Minor Damage: home is damaged and uninhabitable, but may be made habitable in short period of time with repairs; and
- Affected: some damage to the structure and contents, but still habitable.

¹⁰⁵ By law, federal disaster assistance cannot duplicate insurance coverage (44 C.F.R. §206.48(b)(5)).

¹⁰⁶ Special populations, such as low-income, the elderly, or the unemployed may indicate a greater need for assistance (44 C.F.R. §206.48(b)(3)).

¹⁰⁶ Special populations, such as low-income, the elderly, or the unemployed may indicate a greater need for assistance (44 C.F.R. §206.48(b)(3)).

¹⁰⁷ Ibid (44 C.F.R. §206.48(b)(3)).

¹⁰⁸ Based on state population in the 2010 Census.

¹⁰⁹ Statewide Per Capita Impact Indicator for FY2014, *Federal Register*, October 1, 2013.

Author Contact Information

(name redacted)

Analyst in Emergency Management Policy

#redacted#@crs.loc.gov, 7-....

(...continued)

¹¹⁰ Countywide Per Capita Impact Indicator for FY2014, *Federal Register*, October 1, 2013.

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