

Stafford Act and Selected Federal Recovery Programs for Civil Unrest: Historical Perspectives and Policy Observations

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States and localities have looked to the federal government for help with civil unrest since the formation of the United States in 1776. The federal response to incidents of civil unrest was provided on an ad hoc basis until the 1960s, when states and localities began to request assistance pursuant to emergency management frameworks established by the Federal Disaster Relief Act of 1950 (P.L. 81-875) and the Small Business Act of 1953 (P.L. 83-163). In essence, the laws formalized a method for states to request assistance from the federal government and authorized the President and the Administrator of Small Business Administration (SBA) to issue declarations in response to gubernatorial requests for assistance. Since then, many types of federal recovery assistance has been provided by the Federal Emergency Management Agency (FEMA), the Small Business Administration, the Department of Commerce's Economic Development Administration (EDA), and the Department of Housing and Urban Development (HUD). These programs have provided grants, loans, and other forms of assistance to states and localities, nonprofit organizations, businesses, and individuals and households.

Though the frameworks establish an orderly process for requesting and receiving federal assistance, many challenges remain. States have increasingly sought support for recovery from incidents of civil unrest through major disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, the Stafford Act). To date, requests for such assistance have largely been denied; one request was approved (in 1992, a major disaster was requested and declared in California in response to civil unrest stemming from acquittal of police officers accused of criminal beating of Rodney King). Subsequent requests for federal assistance under the Stafford Act for other civil unrest incidents have all been denied. The explanations for these denials rest on two points: (1) the definition of a major disaster does not include explicit language such as "protest" or "civil unrest"; and (2) the nature and scope of the damages caused by the civil unrest generally do not meet the cost threshold used to determine whether a major disaster declaration is warranted. Other considerations include whether the types of assistance authorized under an emergency declaration are sufficient to meet the civil unrest recovery needs of states, localities, nonprofit organizations, households, and businesses.

Some might question whether Stafford Act assistance is appropriate for civil unrest incidents. According to the Senate report on the bill that would become the Stafford Act, Congress designed the law to "only respond to natural catastrophes" and was not intended to "respond to the occasionally catastrophic consequences of social, economic, or political activity and establishes no administrative or programmatic mechanisms to do so." There are other federal programs, such as the SBA Disaster Loan Program, that are designed to provide federal assistance in response to civil unrest and states and localities can seek assistance through those programs in the absence of a major disaster declaration.

Others may argue that Stafford Act assistance is warranted because the damages caused by civil unrest are similar to those caused by natural disasters. While existing federal programs provide some assistance for recovery from civil unrest, Stafford Act assistance is generally more comprehensive: a major disaster declaration authorizes FEMA to provide both short-term assistance (such as emergency food, medical assistance, and sheltering) and long-term assistance (such as reconstruction, assistance to individuals and households, and hazard mitigation) through grants and loans.

This report provides context to the debate about the use of the Stafford Act to support recovery from incidents of civil unrest. It also examines various policy options and considerations for Congress including:

- amending the definition of major disaster to include civil unrest;
- expanding assistance provided by major disaster declaration designations;
- revising the per capita indicator cost threshold used by the Federal Emergency Management Agency to evaluate state need and capacity;

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- expanding the authorization of Individual Assistance;
- expanding Hazard Mitigation Grant Program funding for civil unrest incidents;
- expanding the types of assistance provided under emergency declarations;
- increasing assistance to businesses damaged by civil unrest that are also suffering economic injury as a result of the Coronavirus Disease 2019 (COVID-19) pandemic; and
- oversight of Public Assistance for law enforcement activities.

The report concludes with policy observations that Congress could consider when contemplating laws and policies governing federal assistance for civil unrest incidents.

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Introduction

Since the founding of the nation, states and localities have sought assistance from the federal government for incidents of civil unrest.¹ Federal assistance was ad hoc and provided on a case-by-case basis until the middle of the twentieth century, when the Federal Disaster Relief Act of 1950 (P.L. 81-875) and the Small Business Act of 1953 (P.L. 83-163) established frameworks and processes for providing disaster assistance to states and localities that are still in effect today.²

Starting in the 1960s, state and local governments began requesting supplemental federal assistance through the framework to help businesses, public and nonprofit organizations, and individuals and households recover from the uninsured costs of civil unrest incidents. The amount and type of assistance provided has varied depending on the nature and scope of the incident, as well as the President and Administration officials' assessment of the damages caused by the incident. Of note, the federal government is neither the first responder, nor the primary source of assistance to areas stricken by civil unrest. Federal resources are intended to supplement those of state and local governments, the private sector, and voluntary efforts.

This report is divided into four sections. The first section of this report provides an overview of selected recovery authorities and federal programs relevant to civil unrest recovery assistance. These sources include loan and grant programs administered by the Federal Emergency Management Administration (FEMA), the Small Business Administration (SBA), the Department of Commerce's Economic Development Administration (EDA), and the Department of Housing and Urban Development (HUD). This section also describes how states and localities can request federal assistance. The second section of the report provides a historical overview of requests for federal assistance in response to civil unrest incidents since 1965. The third section discusses policy options and considerations that may be of interest to Congress. The final section concludes with policy observations.

Report Terms

Civil Unrest

For the purposes of this report, the term "civil unrest" is used to describe mass demonstrations or acts of civil disobedience, including but not limited to arson, violence, and damage to property.

State

Under the Stafford Act the term "state" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (42 U.S.C. §5122(4)).

Tribe or Tribal Government

The term "tribe" refers to Indian tribal governments. Per the Stafford Act, "[t]he term 'Indian tribal government' means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994" (42 U.S.C. §5122(6)).

Tribal Chief Executive

The Stafford Act defines "Chief Executive" as the "person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government" (42 U.S.C. §5122(12)).

¹ For example, in 1787 General Benjamin Lincoln mustered 4,400 soldiers to put down an insurgency known as "Shays' Rebellion." See Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* (University of Pennsylvania Press, 2002), p. 25.

² The Federal Disaster Relief Act of 1950 (P.L. 81-875) established a framework and process of providing orderly and continuing means of assistance by the federal government to state and local governments. Much of the framework is still in effect today. The Federal Disaster Relief Act made disaster assistance more immediately accessible by authorizing the President to issue major disaster declarations in response to gubernatorial requests for assistance.

Recovery Authorities and Programs

The following sections provide an overview of major disaster and emergency declarations authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, the Stafford Act), followed by detailed descriptions of recovery programs authorized by the Small Business Act (P.L. 85-536), and recovery programs provided through EDA and HUD.

Stafford Act Declarations

The Stafford Act authorizes the President to issue declarations that provide states, tribes, and localities, as well as individuals and nonprofit organizations, with a range of federal assistance in response to natural and human-caused incidents.³

There are two potential declarations under the Stafford Act that could provide federal assistance in response to a civil unrest incident: (1) a major disaster declaration, and (2) an emergency declaration.

The following sections provide an overview of the Stafford Act declaration process and describe major disaster and emergency declarations, including their respective definitions, and types of assistance that could be authorized in response to civil unrest incidents.

Stafford Act Declaration Process

The federal government does not automatically provide assistance to local, state, territorial, and Indian tribal governments when an incident occurs.⁴ In most cases, the governor or tribal chief executive requests that the President declare an emergency or major disaster and authorize various types of assistance (e.g., Public Assistance and Individual Assistance).⁵ This is because federal assistance is intended to supplement—not supplant—local, state, territorial, or Indian tribal government response and recovery efforts.⁶ In making such a request, the governor or tribal

³ For more information on Stafford Act declarations, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay; and CRS Report R42702, *Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay.

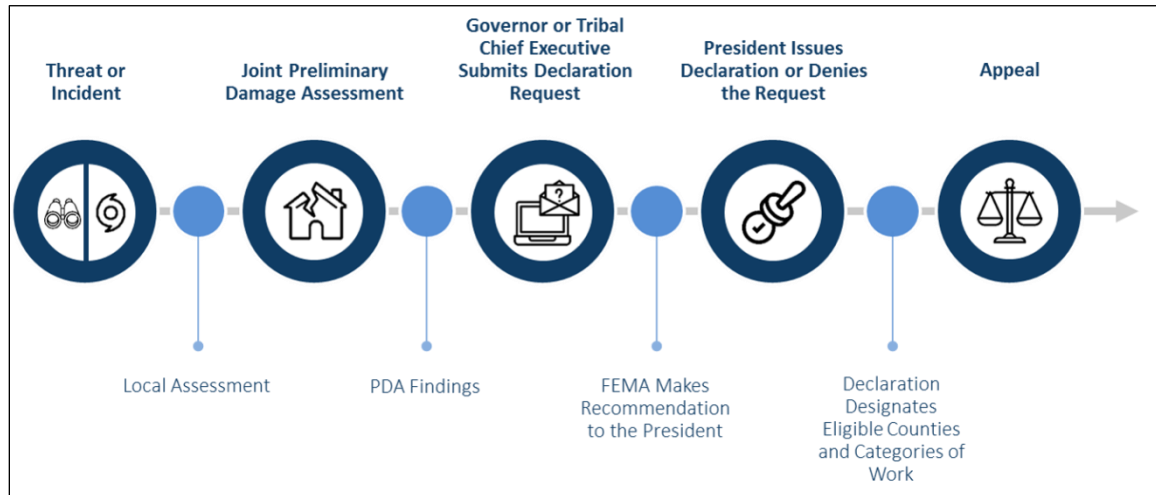
⁴ 44 C.F.R. §206.32(e) defines an incident as “[a]ny condition which meets the definition of major disaster or emergency as set forth in §206.2 which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.”

⁵ 44 C.F.R. §§206.35, 206.36, 206.40(a); FEMA, “The Disaster Declaration Process”; FEMA, “FAQs: Current Process for Tribal Governments to Request a Presidential Declaration,” last updated May 24, 2019, <https://www.fema.gov/frequently-asked-questions-current-process-tribal-governments-request-presidential-declaration>. For more information about the disaster declaration process, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay. Presidential declarations of emergency and major disaster include the areas designated as being eligible for federal assistance, as well as the types of assistance the designated areas are eligible to receive (44 C.F.R. §206.2(a)(6)). Additional designated areas and available assistance are published in the *Federal Register* and listed on FEMA’s “Disasters” website (FEMA, “Disasters,” <https://www.fema.gov/disasters>). A *designated area* is “[a]ny emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.” (44 C.F.R. §206.2(a)(6)).

⁶ The governor or tribal chief executive’s request must document that the “situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments” and that supplemental federal assistance is necessary (44 C.F.R. §§206.35 and 206.36). To justify a declaration of emergency, supplemental federal assistance must be needed to “save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster” (44 C.F.R. §206.3). To justify a declaration of major disaster, federal assistance must be needed to “supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses” (44 C.F.R. §206.36).

chief executive must demonstrate that they are unable to effectively respond to the incident without federal assistance.⁷ **Figure 1** depicts the Stafford Act Declaration Process.

Figure 1. Stafford Act Declaration Process



Source: Developed by CRS based on the Federal Emergency Management Agency's (FEMA's) webpage on "The Disaster Declaration Process," available at <https://www.fema.gov/disaster-declaration-process>.

The governor or tribal chief executive's request for a presidential declaration of emergency or major disaster must include information about the actions and resources that have been or will be committed, and an estimate of the amount and severity of the disaster-caused damages.⁸ For all but the most catastrophic events, this process is deliberative and involves accumulating information from several sources during the Preliminary Damage Assessment (PDA) process.⁹

A key factor included in the PDA report to determine whether a major disaster declaration may be warranted is the "per capita indicator." Generally, FEMA recommends a major disaster be declared only if assessments of public and nonprofit infrastructure damages in the state meet or exceed \$1.53 per capita statewide, or \$3.84 per capita at the county level.¹⁰ The damage assessments must also exceed \$1 million across the state or territory, or \$250,000 across a tribe.¹¹

⁷ 44 C.F.R. §§206.35 and 206.36.

⁸ For a list and description of information requirements to accompany a governor or tribal chief executive's request for an emergency declaration and a major disaster declaration, see 44 C.F.R. §206.35 and 44 C.F.R. §206.36, respectively.

⁹ For example, see FEMA, "Request for Presidential Disaster Declaration: Major Disaster or Emergency," form, OMB Control Number 1660-0009, expires 09/30/2019, available at <https://www.fema.gov/media-library-data/1512409550714-752b7004a7c74c67a485a36551d7c889/FEMAForm010-0-13PresidentialDeclarationRequest.pdf> (note that the form expiration date has passed, but this is the form linked to on FEMA's "Request for Presidential Disaster Declaration Major or Emergency" webpage, available at <https://www.fema.gov/media-library/assets/documents/28122>). For more information on the Preliminary Damage Assessment (PDA) process, see FEMA, "Preliminary Damage Assessments," last updated December 6, 2019, <https://www.fema.gov/preliminary-damage-assessments>; see also CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

¹⁰ FEMA, "Per Capita Impact Indicator and Project Thresholds," <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

¹¹ 44 C.F.R. §206.48(a)(1)-(2); and FEMA, *Tribal Declarations Pilot Guidance*, January 2017, https://www.fema.gov/media-library-data/1523033284358-20b86875d12843441a521a6141c15099/Pilot_Guidance.pdf (hereinafter FEMA, *Tribal Declarations Pilot Guidance*).

A major disaster declaration does not trigger all forms of assistance authorized by the Stafford Act. Rather, different programs are provided depending on the nature and scope of the incident. The following sections describe the types of assistance provided by FEMA and the SBA that may be authorized for a civil unrest incident under a major disaster declaration.

Major Disaster Declarations

Major disaster declarations authorize a wide range of federal assistance to states, local governments, tribal governments, individuals and households, and certain nonprofit organizations to aid recovery from a catastrophic incident. Major disaster declarations must be requested by the state governor or tribal chief executive.

Section 102(2) of the Stafford Act defines a major disaster as:

any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.¹²

Of note, the definition of a major disaster lists natural disasters and, *regardless of cause*, any fire, flood or explosion but does not include the terms “civil unrest” or “riots” which may pose a challenge to states and localities seeking a major disaster declaration in response to an incident of civil unrest. The potential implications of this definition are addressed in the “Amending the Definition of a Major Disaster” section of this report.

PA-Only Major Disaster Declarations

Incidents without sufficient damages to households may be limited to Public Assistance. Major disaster declarations that only authorize the Public Assistance program for the incident are referred to as “PA-only” major disaster declarations. Though they are referred to as PA-only major disaster declarations, they may authorize both FEMA’s Public Assistance Program and Hazard Mitigation Grant Program. PA-only major disaster declarations **do not** authorize FEMA’s Individual Assistance program.

Major Disaster Assistance: FEMA

FEMA administers three principal emergency and disaster assistance programs under a major disaster declaration pursuant to the Stafford Act: (1) Public Assistance (PA), (2) Individual Assistance (IA), and (3) Hazard Mitigation Assistance.¹³

FEMA Assistance Programs at a Glance

FEMA provides three principal forms of assistance:

Public Assistance: provides grants on a cost-share basis to state, territorial, Indian tribal government, and local governments and certain private nonprofit organizations (PA Applicants). PA reimburses Applicants for the costs of emergency protective services, conducting debris removal operations, and repairing or replacing damaged facilities.

Individual Assistance: provides financial and direct aid to affected individuals and households, and can take the form of housing assistance, crisis counseling, case management services, legal services, disaster unemployment assistance, and other needs assistance.

¹² P.L. 93-288, 42 U.S.C. §5122.

¹³ FEMA is also responsible for coordinating state, local, and federal response efforts.

Hazard Mitigation Grant Program (HMGP): funds mitigation and resiliency projects and programs. The state, territory, or tribal government can use HMGP funding for mitigation projects for any eligible activities that reduce risk and build resilience.

Public Assistance

A major disaster declaration issued for civil unrest could authorize PA to provide reimbursement for the following activities, grouped into emergency or permanent work categories:¹⁴

PA Emergency Work includes

- **Debris Removal (PA Category A)**—PA Applicants may receive direct assistance and reimbursement for the costs of removing debris and wreckage from public and private property when FEMA determines such work is in the public interest.¹⁵
- **Emergency Protective Measures (PA Category B)**—PA Applicants may receive direct assistance and reimbursement for work undertaken to save lives and protect property (e.g., search and rescue, emergency medical care, the distribution of food and first aid, law enforcement, and firefighting).¹⁶
- **Mission Assignments**—the President has the authority to direct any federal agency to use its authorities and resources to support state and local response and recovery efforts, primarily through Public Assistance Emergency Work, as authorized in Sections 402, 403, and 502 of the Stafford Act. In these cases, FEMA may “assign” missions to federal entities and organizations to address a state’s request for assistance pursuant to, or in anticipation of, a Stafford Act declaration.¹⁷ FEMA does not exclusively perform these federal disaster response and recovery operations; however, activities carried out by other agencies through these “Mission Assignments” are generally reimbursed by FEMA through the Disaster Relief Fund (DRF).¹⁸ For example, the Army Corps of Engineers may be tasked with debris removal activities following an incident, including civil unrest.

PA Permanent Work—State, tribal, territorial, and local governments and eligible private organizations may receive reimbursement for the costs incurred to repair, restore, reconstruct, or replace the following types of disaster-damaged facilities:

- Roads and Bridges (Category C);¹⁹

¹⁴ For more information on FEMA’s Public Assistance (PA) program, see CRS In Focus IF11529, *A Brief Overview of FEMA’s Public Assistance Program*, by Erica A. Lee.

¹⁵ For more information on PA for Debris Removal, see FEMA, *Public Assistance Program and Policy Guide (PAPPG)*, effective June 1, 2020, pp. 99-109, https://www.fema.gov/sites/default/files/2020-06/fema_public-assistance-program-and-policy-guide_v4_6-1-2020.pdf (hereinafter FEMA, *PAPPG*).

¹⁶ FEMA, *PAPPG*, pp. 110-137.

¹⁷ FEMA, *FEMA Mission Assignment (MA) Policy*, FP 104-010-2, November 6, 2015, p. 4, https://www.fema.gov/media-library-data/1450099364660-fd855ba68f3189d974966ea259a2641a/Mission_Assignment_Policy.pdf.

¹⁸ The Disaster Relief Fund (DRF) is FEMA’s primary funding source for response and recovery projects. Funds from the DRF are not available for activities undertaken under other authorities or agency missions, or for non-Stafford Act incidents requiring a coordinated federal response. For more information about the DRF, see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

¹⁹ *Ibid.*, pp. 168-169.

- Water Control Facilities (Category D);²⁰
- Buildings and Equipment (Category E)—including eligible building contents;²¹
- Utilities (Category F);²² and
- Parks, Recreational, Other Facilities (Category G).²³

Individual Assistance

Individual Assistance (IA) provides grants and direct assistance to individuals and families. The forms of IA that may be provided pursuant to a major disaster declaration include

- Individuals and Households Program (IHP), which can take the form of assistance for housing and for other needs (referred to as Other Needs Assistance or ONA);
- Crisis Counseling Assistance and Training Program;
- Disaster Unemployment Assistance;
- Disaster Legal Services; and
- Disaster Case Management.²⁴

All forms of IA may be available following a presidential major disaster declaration.²⁵

Many major disasters provide IA, in addition to PA and Hazard Mitigation Assistance. In rare cases, there have been major disasters that have only provided IA, as discussed later in “Major Disaster Declaration Designations.” IA must be authorized in order for individuals and businesses to qualify for assistance through the SBA’s Disaster Loan Program.

Hazard Mitigation Grant Program

Hazard Mitigation Grant Program (HMGP) assistance is triggered by a request from the governor of an affected state or territory, or the chief executive of an affected Indian tribal government after a major disaster declaration or the receipt of a Fire Management Assistance Grant (FMAG).²⁶ The HMGP program is designed to ensure that the reconstruction process following a disaster addresses opportunities to include mitigation measures to reduce the loss of life and property from future disasters. HMGP funding may be available for the entire state if requested and is not

²⁰ Ibid., pp. 170-171.

²¹ Ibid., pp. 171-176

²² Ibid., pp. 176-178.

²³ Ibid., pp. 179-182.

²⁴ For more information on FEMA housing assistance, see CRS Report R47015, *FEMA’s Individuals and Households Program (IHP)—Implementation and Considerations for Congress*, by Elizabeth M. Webster. For more information on the Individual Assistance (IA) programs, see CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*, by Elizabeth M. Webster; see also FEMA, “Individual Disaster Assistance,” <https://www.fema.gov/individual-disaster-assistance>. For additional information on disaster unemployment assistance, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker.

²⁵ FEMA, “How a Disaster Gets Declared,” <https://www.fema.gov/disasters/how-declared>.

²⁶ An FMAG declaration authorizes various forms of federal assistance, such as equipment, personnel, and grants to any state or local government for the control, management, and mitigation of any fire on public or private forest land or grassland that might become a major disaster. The Fire Management Assistance declaration process is initiated when a state submits a request for assistance to the FEMA Regional Director at the time a “threat of major disaster” exists. For more information on the Hazard Mitigation Grant Program, see CRS Insight IN11187, *Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance*, by Diane P. Horn.

restricted to the areas included in the declaration.²⁷ HMGP funding does not have to be used for the incident that caused the major disaster. Rather, the state, territory, or tribal government can use HMGP funds for any eligible activity and is not limited to addressing the hazard or area for which the grant was awarded. For example, a state which received HMGP funding for a disaster declaration for a coastal flood could choose to use the funding for mitigation activities related to wildfires in inland counties. In the case of civil unrest, eligible mitigation funding could potentially be used to build resilience, such as property acquisition and structure demolition; purchase of generators; structural and nonstructural retrofitting of existing buildings and facilities; infrastructure retrofit; post-disaster code enforcement; technical assistance; or management costs.

HMGP funding is awarded as a formula grant to a state based on the estimated total federal assistance per major disaster declaration or FMAG, subject to a sliding scale formula.²⁸ HMGP funding is up to 15% of the first \$2 billion, up to 10% for amounts between \$2 billion and \$10 billion, and up to 7.5% for amounts between \$10 billion and \$35.333 billion. States with enhanced mitigation plans²⁹ receive 20%, not to exceed \$35.333 billion.

Major Disaster Assistance: SBA

Major disaster declarations may also put the SBA Disaster Loan Program into effect.³⁰ As described below, the SBA Disaster Loan Program provides four categories of loans for disaster-related losses. Because the PA-only major disaster designation plays a key role in determining SBA loan eligibility, the implications of a PA-only designation are italicized below.

- **Home Personal Property Disaster Loans**—provide up to \$40,000 to replace personal items not covered by insurance such as furniture, vehicles, and clothing. *Individuals and households are ineligible for SBA Home Personal Property Disaster Loans under PA-only major disaster declarations.*
- **Home Physical Disaster Loans**—provide up to \$200,000 to repair or replace uninsured or underinsured disaster related damages. Home Physical Disaster Loans can only be used to repair and rebuild primary residences. *Individuals and households are ineligible for SBA Home Physical Disaster Loans under PA-only major disaster declarations.*
- **Business Physical Disaster Loans**—provide up to \$2 million to help businesses and nonprofit organizations repair or replace disaster-damaged property, including inventory and supplies. *Only private nonprofit organizations are eligible for SBA Business Physical Disaster Loans for PA-only major disaster loans.*
- **Economic Injury Disaster Loans (EIDLs)**—provide up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. Loan proceeds can only be used for working capital necessary to enable the business or organization to alleviate the specific economic injury and to resume normal operations. Loan amounts for EIDLs are

²⁷ FEMA, *Hazard Mitigation Assistance Guidance*, https://www.fema.gov/sites/default/files/2020-07/fy15_HMA_Guidance.pdf.

²⁸ 42 U.S.C. §5170c(a) and 44 C.F.R. §206.432(b)).

²⁹ 44 C.F.R. §201.5.

³⁰ 13 C.F.R. §123.3. For more information on the SBA Disaster Loan Program, see CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*, by Bruce R. Lindsay; and CRS Report R44412, *SBA Disaster Loan Program: Frequently Asked Questions*, by Bruce R. Lindsay.

based on actual economic injury and financial needs, regardless of whether the business suffered any property damage. *Only private nonprofit organizations are eligible for SBA EIDL for PA-only major disaster loans.*

Emergency Declarations

Emergency declarations authorize a more limited range of federal assistance and are issued by the President to protect property and public health and safety and to lessen or avert the threat of a major disaster. Emergency declarations are generally requested by governors and tribal chief executives. However, under Stafford Act Section 501(b), the President may issue a unilateral declaration for certain emergencies when the federal government has the primary responsibility for incident response (e.g., in the case of destruction of federal property, including the explosion of the Federal Courthouse at Oklahoma City).³¹

Section 102(1) of the Stafford Act defines an emergency as

any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.³²

Emergency Assistance: FEMA

FEMA typically is the lead agency for providing federal assistance under an emergency declaration. Similar to the major disaster declaration, FEMA may also coordinate other federal entities and organizations involved in the incident and reimburse them through Mission Assignments. In addition, emergency declarations often authorize Direct Federal Assistance, whereby FEMA may task other federal personnel to perform emergency work on behalf of the affected jurisdiction.³³ For example, FEMA could task the Army Corps of Engineers to remove debris pursuant to an emergency declaration for civil unrest if local governments are overwhelmed.³⁴

Emergency declarations typically only authorize PA “Emergency Work.” They may also, in rare instances, authorize limited forms of IA: the Individuals and Households Program and the Crisis Counseling Assistance and Training Program.³⁵ Hazard Mitigation Assistance may not be authorized pursuant to an emergency declaration.³⁶

PA Emergency Work is not available to businesses, though FEMA may authorize debris removal from private properties in limited circumstances when it is found to threaten public health and safety.³⁷

³¹ P.L. 93-288, 42 U.S.C. §5191. Examples of Section 501(b) declarations include the COVID-19 pandemic, the explosion at the federal courthouse in Oklahoma City, and the loss of the Space Shuttle Columbia.

³² P.L. 93-288, 42 U.S.C. §5122.

³³ P.L. 93-288, 42 U.S.C. §§5170a-b, 5192.

³⁴ For more information, see CRS Report R44941, *Disaster Debris Management: Requirements, Challenges, and Federal Agency Roles*, by Linda Luther.

³⁵ Stafford Act §502(a)(6), 42 U.S.C. §5192(a)(6), as amended by Section 7321 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263), which amended the Stafford Act to enable Crisis Counseling to be authorized pursuant to an emergency declaration.

³⁶ FEMA, “How a Disaster Gets Declared,” <https://www.fema.gov/disasters/how-declared>.

³⁷ FEMA, *PAPPG*, pp. 107-109.

Emergency Assistance: SBA

Emergency declarations also trigger the SBA Disaster Loan Program, but because emergency declarations are almost exclusively designated as PA-only, SBA disaster loans are limited to private, nonprofit organizations. Businesses are *ineligible* for SBA disaster loans under an emergency declaration pursuant to the Stafford Act.

Small Business Act Disaster Declarations

Under the Small Business Act, the SBA Administrator has the authority to issue disaster declarations in response to gubernatorial requests to activate the SBA Disaster Loan Program. Governors often seek SBA disaster declarations when their requests for Stafford Act assistance have been denied.

Riots and civil disorders are listed as a declarable incident under the Small Business Act, which defines a disaster as

a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.³⁸

In the context of civil unrest, there are two types of declarations that could be issued by the SBA Administrator absent a presidential declaration under the Stafford Act: (1) a physical disaster declaration in response to a gubernatorial request for assistance, or (2) an EIDL declaration.

SBA Physical Disaster Declaration

SBA physical disaster declarations make all loan types available to eligible individuals, households, businesses, and private nonprofit organizations. The thresholds used to determine whether to issue an SBA physical disaster declaration are significantly lower than those used for major disaster declarations under the Stafford Act and include a minimum amount of uninsured physical damage to buildings, machinery, inventory, homes, and other property. Generally, this minimum is at least 25 homes or businesses (or some combination of the two) that have sustained uninsured losses of 40% or more in any county or other smaller political subdivision of a state or U.S. possession.³⁹

SBA EIDL Declaration

SBA EIDL declarations make EIDL assistance available to eligible businesses and private nonprofit organizations. The criterion used to determine whether to issue an EIDL declaration is when the SBA Administrator receives a certification from a state governor that at least five small businesses have suffered substantial economic injury as a result of a disaster. This declaration is offered only when other viable forms of financial assistance are unavailable. Small agricultural cooperatives and most private nonprofit organizations located within the disaster area or contiguous counties and other political subdivisions are eligible for SBA disaster loans when the SBA Administrator issues an EIDL declaration.

³⁸ P.L. 85-536, 15 U.S.C. §632(k).

³⁹ See 13 C.F.R. §123.3(3)(ii) and 13 C.F.R. §123.3(3)(iii).

Community and Economic Development Programs

Community and economic development programs have provided assistance to state and local stakeholders following instances of civil unrest. EDA and HUD administer programs that may assist state and local stakeholders with economic recovery, neighborhood revitalization, rebuilding, and other activities. However, community and economic development programs differ from FEMA and SBA disaster assistance programs in several ways. For instance, several EDA programs and HUD's Community Development Block Grant (CDBG) program have been authorized by Congress to meet place-based or broad-based community and economic development objectives, rather than civil unrest recovery objectives. Also, the method of appropriating, allocating, and distributing funds is different from the process for FEMA and SBA programs, and the time frame for implementation is generally focused on supporting long-term economic recovery or resiliency plans and economic restructuring initiatives. Additionally, with some exceptions, the eligible recipients of community and economic development programs are public entities and institutions rather than individuals or businesses.

Following instances of civil unrest, funding from EDA programs and the CDBG program provide assistance for the implementation of economic recovery plans and strategies that have been developed by state and local stakeholders. The programs offer flexibility to state and local stakeholders to address the unique development needs of their communities through a range of construction and nonconstruction projects and activities with annually appropriated funds. Eligible entities apply to the federal agency for project funds—generally through existing procedures and processes—and are not required to apply for a formal emergency declaration from EDA and HUD program administrators.

Additionally, in some cases, these programs receive supplemental appropriations. Congress approves supplemental appropriations for EDA programs and HUD's CDBG program in response to national or local disasters (e.g., hurricanes, wildfires, flood events, public health pandemics) or to address ongoing or episodic conditions of economic distress.

EDA Programs

EDA programs, including Technical Assistance, Public Works, Economic Adjustment Assistance (EAA), and others, may support a variety of activities that facilitate economic recovery following instances of civil unrest.⁴⁰ EDA grants are awarded on a competitive basis to states, cities, counties, tribal governments, economic development districts, and other political subdivisions of states, as well as institutions of higher education or a consortium of such institutions, and not-for-profit organizations acting in cooperation with officials of a political subdivision of a state.⁴¹ These grants may support both construction and nonconstruction projects.

Although EDA does not make grants directly to businesses, eligible recipients can use EDA funding to support businesses through credit or technical assistance programs.⁴² For instance, revolving loan fund (RLF) programs can be used to target assistance to specific neighborhoods,

⁴⁰ EDA administers additional programs. See "EDA Programs," <https://www.eda.gov/programs/>.

⁴¹ The term "state" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. For-profit entities and individuals do not qualify for Technical Assistance, Public Works, and Economic Adjustment Assistance (EAA) programs. 42 U.S.C. §3122.

⁴² Approximately 400 organizations currently administer EDA-funded revolving loan funds (RLFs). For more information about RLFs, see CRS Report *Economic Development Revolving Loan Funds (ED-RLFs)*.

regions, and types of businesses following instances of civil unrest. Businesses may also receive direct technical assistance through projects funded by EDA grants or EDA-supported University Center partners.⁴³

Congress approves annual appropriations for EDA programs and occasionally approves supplemental appropriations for the EAA program in response to certain natural disasters and other events.⁴⁴

Public Works and Economic Adjustment Assistance Programs

EDA's Public Works and Economic Adjustment Assistance (EAA) programs help distressed communities revitalize, expand, and upgrade their physical infrastructure as well as assist areas experiencing long-term economic distress or sudden and substantial economic dislocation.⁴⁵ By example, in October 2015, EDA's EAA funding helped establish a nonprofit entrepreneurial center to assist small business owners and entrepreneurs who were financially affected by the civil unrest in the Baltimore region.⁴⁶ The EAA program also supports post-disaster economic recovery efforts, providing assistance for places that have been declared areas of major disaster or emergency under the Stafford Act.⁴⁷ Projects are generally eligible for Public Works and EAA funding if they are consistent with an EDA-approved economic development strategy and the service areas meet the criteria for economic distress.⁴⁸ Infrastructure—including water and sewer systems improvements, industrial parks, business incubator facilities, and skill-training facilities—is one of many eligible uses of Public Works and EAA funds. EAA funding may also be used for nonconstruction activities, such as technical assistance, including feasibility studies; strategic planning activities that include the creation of short-term action plans intended to stabilize a distressed community and regionally-oriented, long-term development strategies; and the capitalization of RLFs, which provide loans to qualifying businesses.⁴⁹

In addition to the Public Works and EAA programs, EDA's Technical Assistance program supports economic development decisionmaking, such as impact analyses or feasibility studies. In 1968, EDA's Technical Assistance funding helped launch the Economic Resources Corporation

⁴³ For additional information about the EDA's University Center program see <https://www.eda.gov/programs/university-centers/>.

⁴⁴ In FY2020, \$37 million was allocated for the EAA grant program from EDA appropriations (P.L. 116-94). Since the early 1990s, Congress has approved supplemental funding to "support long-term economic recovery and economic resiliency in the aftermath of disasters." By example, in FY2018 and FY2019, Congress appropriated an additional \$600 million per year to EDA for the EAA program for communities impacted by disasters that occurred in calendar years 2017-2019. See EDA, "2020 Disaster Assistance Brochure: Leading Economic Recovery in Disaster-Impacted Communities," <https://www.eda.gov/files/programs/disaster-recovery/EDA-Disaster-Brochure.pdf>. Additionally, in FY2020, Congress provided \$1.5 billion of supplemental grant funding to the EAA program to address economic dislocations caused by the COVID-19 pandemic in P.L. 116-136.

⁴⁵ 42 U.S.C. §3141 and 42 U.S.C. §3149.

⁴⁶ EDA, *FY2015 Annual Report*, pp. 30-31, <https://www.eda.gov/files/annual-reports/fy2015/EDA-FY2015-Annual-Report-full.pdf>.

⁴⁷ 42 U.S.C. §3149. For additional information about EDA and Disaster Recovery, see <https://www.eda.gov/disaster-recovery/>. For more information about Economic Adjustment Assistance, see <https://www.eda.gov/programs/eda-programs/>; and CRS Insight IN11402, *The Economic Development Administration's Economic Recovery Assistance for COVID-19 Impacted Communities*, by Julie M. Lawhorn.

⁴⁸ The criteria for economic distress is determined by the area's unemployment rate, per capita income, or a special need. 42 U.S.C. §3161.

⁴⁹ For additional information about EDA programs, see <https://www.eda.gov/programs/eda-programs/>.

(ERC) in South Los Angeles, California to assist with economic development projects in the Watts community following the Watts Riots in 1965.⁵⁰

The Community Development Block Grant (CDBG) Program

The majority of CDBG funds are administered through two sub-programs: (1) an entitlement cities program for principal cities of metropolitan statistical areas, or other cities with populations of 50,000 or greater (or urban counties of 200,000 or greater); and (2) a state program, which allows states to sub-award CDBG funds (usually competitively) to nonentitlement communities.⁵¹ The entitlement cities program receives approximately 70% of CDBG funds.⁵²

Because it is a block grant program, CDBG funds are relatively flexible, and may be utilized for a variety of purposes provided that the activities meet one of three national objectives.

CDBG National Objectives

The CDBG program has three national objectives:

1. principally benefit low- and moderate-income (LMI) persons;⁵³
2. aid in the prevention or elimination of slums or blight;
3. or meet an urgent need for the purposes of health or safety.⁵⁴

The CDBG program flexibilities enable grantees to deal with emergencies and unforeseen events. Existing CDBG funds can be adapted for recovery and mitigation of damages from disasters or civil unrest, through

- planning for and obligating future funds in service of these objectives; or
- reprogramming existing funds by amending grantees' consolidated plans in coordination with HUD.

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.) identifies the categories of eligible activities that may be undertaken with CDBG funds. Generally, program activities fall into six broad categories: (1) planning and administrative activities; (2) public works and public facilities; (3) economic development; (4) public services; (5) housing-related activities; and (6) acquisition, demolition, and disposition of real property.⁵⁵

CDBG grantees may reprogram funds to meet any eligible need, including recovery. Budget constraints and competing priorities within units of local government may limit the likelihood of this option. In some cases, grantees may receive additional waivers or alternative requirements for the use of CDBG funds in response to emerging issues. For instance, in response to the 1992

⁵⁰ EDA, "Success Story: Rebuilding Watts California," *August 2015 Newsletter*, <https://www.eda.gov/archives/2016/news/blogs/2015/08/01/success-story.htm>. In 1969, EDA's Public Works funding and other programs helped the ERC build infrastructure to support economic recovery activities in the area. For more information, see EDA, *Jobs Through Economic Development* (Washington, DC: 1979), pp. 30-31.

⁵¹ HUD, *State Community Development Block Grant Program*, accessed January 24, 2020, <https://www.hudexchange.info/programs/cdbg-state/>.

⁵² There are other CDBG components for insular and tribal entities that are beyond the scope of this report.

⁵³ The low- and moderate-income (LMI) benefit national objective is required to total 70% of a grantee's projects under the conventional CDBG program, although waivers may be obtained in extenuating circumstances.

⁵⁴ 42 U.S.C. §§5301 et seq. as interpreted by HUD at 24 C.F.R. §570.200 and the HUD Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities.

⁵⁵ **Table B-1** provides a sample of eligible activities within these categories.

Los Angeles riots, Congress increased the ceiling on the use of the CDBG funds for public service activities in Los Angeles from 15% to 25%.⁵⁶

Historical Overview of Federal Assistance

Small Business Administration

The SBA has long been the main source federal assistance for civil unrest incidents in the United States (see **Table 1**). Since 1953, the SBA has aided businesses, individuals, households, and nonprofit organizations by providing direct loans to help repair, rebuild, and recover from natural and human-caused disasters.⁵⁷ The SBA also offers low-interest, long-term loans to businesses to help recover from economic losses after a declared disaster.

Table 1. Small Business Act Declarations Related to Civil Unrest

1967-2020; Nominal Dollars

Incident Description and Declaration Number	Declaration Type and Approval Date	Approved Loan Amount ^a
Civil Unrest in Charleston, South Carolina (Death of George Floyd) SC-00074	Economic Injury Disaster Loan (EIDL) Declaration 08/17/2020	\$332,300
Civil Unrest in Philadelphia, Pennsylvania (Death of George Floyd) PA-00106	SBA Administrative Physical Disaster Declaration EIDL Declaration 08/07/2020	\$373,300
Civil Unrest in Minneapolis, Minnesota (Death of George Floyd) MN-00081	SBA Administrative Physical Disaster Declaration EIDL Declaration 08/03/2020	\$3,465,600
Civil Unrest in Chicago, Illinois (Death of George Floyd) IL-00060	SBA Administrative Physical Disaster Declaration EIDL Declaration 06/23/2020	\$1,134,000 ^b
Civil Unrest in San Francisco, California (Death of George Floyd) CA-00319	SBA Administrative Physical Disaster Declaration 06/17/2020	\$4,350,000
Civil Unrest in Baltimore, Maryland (Death of Freddie Gray) MD-00028	SBA Administrative Physical Disaster Declaration EIDL Declaration 05/11/2015	\$165,400 ^b

⁵⁶ GAO, *Community Investment: Los Angeles CDBG Public Service Funds*, GAO-02-726R, June 28, 2002, <https://www.gao.gov/assets/100/91341.pdf>.

⁵⁷ For more information on the SBA Disaster Loan Program, see CRS Report R44412, *SBA Disaster Loan Program: Frequently Asked Questions*, by Bruce R. Lindsay.

Civil Unrest in Ferguson, Missouri (Death of Michael Brown) MO-00072	EIDL Declaration 09/03/2014	\$7,800
Civil Unrest in Cincinnati, Ohio (Death of Timothy Thomas) #9L55	EIDL Declaration 05/01/2001	\$176,700
Civil Unrest in Seattle, Washington (World Trade Organization Conference) #9H05	EIDL Declaration 04/07/2000	\$19,000
Civil Unrest in St. Petersburg, Florida (Death of Tyron Lewis) #2916	SBA Administrative Physical Disaster Declaration 12/03/1996	\$1,639,100
Civil Unrest in Washington DC. (Death of Daniel Enrique Gomez) #7356, #7357, #73581	EIDL Declaration July 25, 1991	\$809,200
Civil Disorder in Miami, Florida (Death of Arthur McDuffie) #1843	SBA Administrative Physical Disaster Declaration 06/02/1980	\$22,641,858
Civil Disorder in Newark, NJ (Beating of John William Smith) #632	SBA Administrative Physical Disaster Declaration 07/31/1967	\$365,650
Civil Disorder in Detroit, MI (Police raid of a blind pig ^a) #631	SBA Administrative Physical Disaster Declaration 07/31/1967	\$3,979,500

Sources: Compiled by CRS using SBA Disaster Loan Data Sets, *Federal Register*, and press accounts.

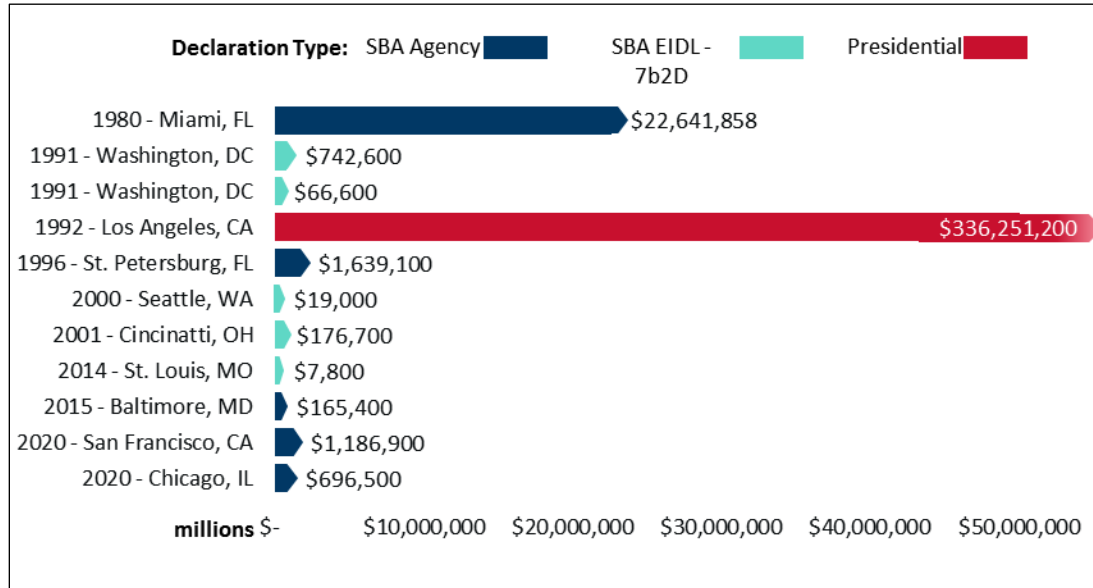
Notes: SBA Administrative Physical Disaster Declarations makes all SBA loan types available to eligible individuals and households, businesses, and private, nonprofit organizations. Not all applicants accept approved loans.

- Loan amounts provided by SBA for select disasters are current as of November 18, 2020.
- SBA agency total amount. Granular data on SBA business disaster loans (including EIDL) and home disaster loans were not available.
- A “blind pig” refers to an illicit drinking establishment.

Figure 2 provides SBA disaster loan amounts associated with civil unrest incidents since 1980. As shown in the figure, the SBA provided over \$336.2 million in loans to assist with recovery from civil unrest following the 1992 acquittal of police officers on criminal charges of beating Rodney King, the most assistance provided by the SBA for a civil unrest incident to date.

Figure 2. SBA Disaster Loans for Civil Unrest Incidents

SBA Disaster Loan Amounts by Declaration Type



Source: Compiled by CRS using disaster loan datasets provided by SBA.

Notes: Figure 2 is not to scale due to the amount of assistance provided to individuals and businesses in Los Angeles in 1992 following the acquittal of police officers on criminal charges of beating Rodney King. Not all applicants accept approved loans. The presidential declaration in Los Angeles in 1992 was authorized pursuant to the Stafford Act and, therefore, is not included in Table 1.

Federal Emergency Management Agency

States and localities have also sought civil unrest assistance from FEMA by requesting a major disaster declaration pursuant to the Stafford Act. As shown in **Table 2**, there have been four separate gubernatorial requests for major disaster declarations in response to civil unrest incidents. Only California's request, in response to the civil unrest following the verdict of the criminal trial of police officers in the beating of Rodney King, was approved and major disaster requests for civil unrest incidents in Minnesota, North Dakota, and Maryland have all been declined (see **Table 2**). According to the denial letters sent to the governors by FEMA, the common rationale for denying the request in North Dakota and Maryland was based on the "determination that supplemental federal assistance under the Stafford Act is not appropriate for this event."⁵⁸ Another rationale provided is that the impact to public infrastructure is "within the capabilities of the local and state governments to recover from."⁵⁹

⁵⁸ FEMA, "North Dakota—Civil Unrest, Denial," Preliminary Damage Assessment Report, May 18, 2017, p. 1, <https://www.fema.gov/media-library-data/1500312452287-414eb975c508f46a05f0d2666a693320/PDAReporDenialND.pdf>; FEMA, "Maryland—Civil Unrest, Denial of Appeal," Preliminary Damage Assessment Report, July 29, 2015, p. 1, <https://www.fema.gov/media-library-data/1441051207394-f545e3fcbcc33e36b70031f9b6f26e02/PDAReporAppealDenialMD.pdf>. See 44 C.F.R. §206.48 for the Federal Emergency Management Agency's (FEMA's) factors for evaluating a governor's request for a major disaster declaration.

⁵⁹ "Federal Government Denies Minnesota's Request for Aid to Clean Up, Rebuild in Twin Cities," *Minnesota Public Radio*, July 11, 2020, at <https://www.mprnews.org/story/2020/07/11/federal-government-denies-minnesotas-request-for-aid-to-clean-up-rebuild-in-twin-cities>.

The specifics behind these denials are unclear. A review of the preliminary damage assessment reports suggests that the damages caused by the civil unrest incidents in Maryland and Minnesota met FEMA’s per capita indicator cost threshold, which is a major factor that is used by FEMA when it makes its major disaster declaration recommendations to the President.

FEMA also considers other factors when evaluating declaration requests.⁶⁰ Additionally, a request for assistance could be denied if the incident did not meet the legal definition of a major disaster.⁶¹ The President has ultimate discretion and decisionmaking authority to issue declarations under the Stafford Act.

Table 2. Stafford Act Declaration Requests Related to Civil Unrest

Approved and Denied Declarations

Incident Description	Request Type	Declaration Decision	Approval/Denial Date
California Fire During a Period of Civil Unrest (DR-942) Criminal Trial Verdict in beating of Rodney King	Major Disaster	Approved	05/02/1992
Civil Unrest in Baltimore, Maryland Death of Freddie Gray	Major Disaster	Denied	07/29/2015
Civil Unrest in North Dakota Dakota Access Pipeline	Major Disaster	Denied	05/18/2017
Civil Unrest in Minneapolis, Minnesota Death of George Floyd	Major Disaster	Denied	07/10/2020

Sources: Compiled by CRS using FEMA declaration and preliminary damage assessment reports, *Federal Register* notices, and press accounts.

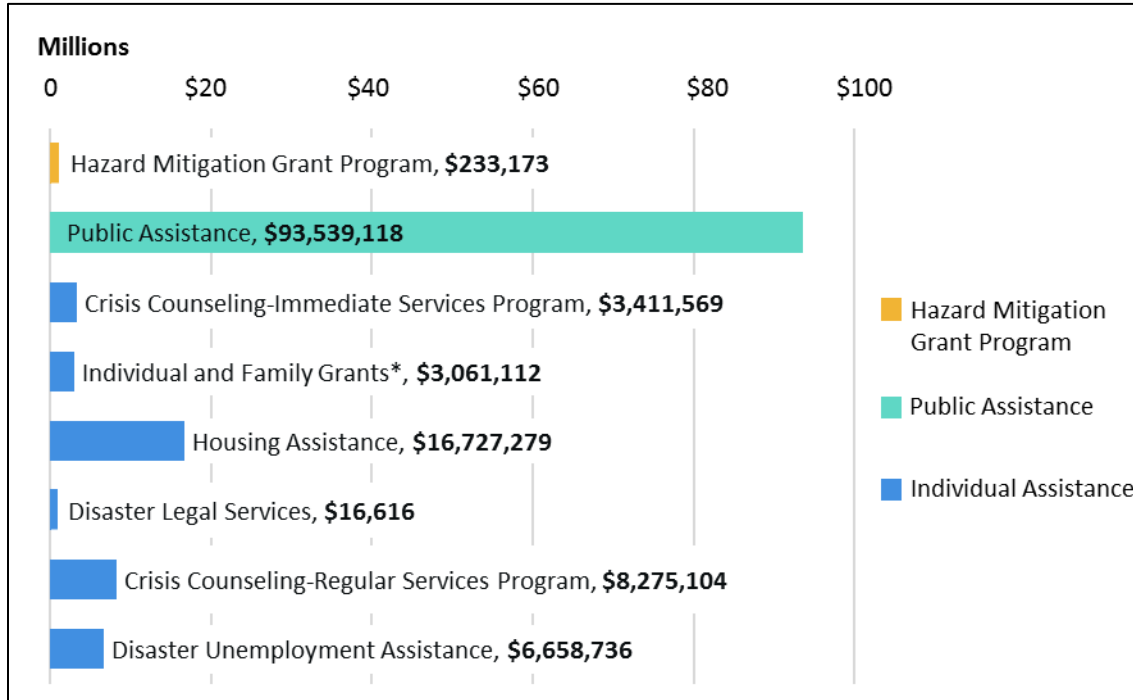
The major disaster issued to California provided \$93 million in Public Assistance, \$38 million for various FEMA Individual Assistance programs, and \$233,173 in hazard mitigation through FEMA’s Hazard Mitigation Grant Program (see **Figure 3**).⁶²

⁶⁰ Lists of the factors used to evaluate requests for Stafford Act assistance are located in **Table C-1** and **Table C-2**.

⁶¹ See “Major Disaster Declarations,” above.

⁶² These amounts are in addition to the \$336.2 million provided by SBA (see **Figure 2**).

Figure 3. FEMA Assistance as Authorized by the 1992 Major Disaster Declaration
Civil Unrest After the Criminal Trial in the Beating of Rodney King



Source: Developed by CRS based on obligations data provided by FEMA.

Note: Figure 3 details grant assistance provided by FEMA. Section 206(c) of the Disaster Mitigation Act of 2000 (P.L. 106-390) amended the Stafford Act to remove the Individual Assistance—Individual and Family Grant Programs.

Community and Economic Development Programs

As previously mentioned, EDA and HUD also administer programs that assist state and local stakeholders with economic recovery, neighborhood revitalization, rebuilding, and other activities. EDA and HUD funds have also been awarded to assist communities recovering from instances of civil unrest.

For instance, in 1968 EDA's Technical Assistance and Public Works programs helped launch the Economic Resources Corporation (ERC) in South Los Angeles, CA, to assist with economic development projects in the Watts community following the Watts Riots in 1965.⁶³ In October 2015, EDA's EAA funding helped establish a nonprofit entrepreneurial center to assist small business owners and entrepreneurs who were financially affected by the civil unrest in the Baltimore region.⁶⁴

⁶³ EDA, "Success Story: Rebuilding Watts California," *August 2015 Newsletter*, <https://www.eda.gov/archives/2016/news/blogs/2015/08/01/success-story.htm>.

⁶⁴ EDA, *FY2015 Annual Report*, pp. 30-31, <https://www.eda.gov/files/annual-reports/fy2015/EDA-FY2015-Annual-Report-full.pdf>.

In response to some emergencies, Congress has also passed supplemental appropriations of CDBG funds, typically, but not exclusively, in areas with federal emergency or disaster declarations under the Stafford Act.⁶⁵

Policy Options and Considerations for Congress

The following sections examine policy options and considerations that may be of interest to Congress when contemplating federal assistance for civil unrest. These policy options and considerations include

- amending the definition of major disaster to include civil unrest;
- expanding assistance provided by major disaster declaration designations;
- revising FEMA's per capita indicator cost threshold, which FEMA uses to evaluate state need and capacity;
- expanding the authorization of FEMA's Individual Assistance program;
- expanding FEMA's Hazard Mitigation Grant Program funding for civil unrest incidents;
- expanding the types of assistance provided under an emergency declaration;
- increasing assistance to business damaged by civil unrest businesses that are also suffering economic injury as a result of Coronavirus Disease 2019 (COVID-19); and
- withholding FEMA's Public Assistance from law enforcement.

Amending the Definition of a Major Disaster

The Stafford Act does not explicitly mention civil unrest or civil disorder in its definition of a major disaster. This omission may discourage FEMA from recommending declarations. As noted above, according to the PDA reports for the episodes of civil unrest in North Dakota and Maryland by FEMA, the rationale for denying both requests was based on the "determination that supplemental federal assistance under the Stafford Act is not appropriate for this event."⁶⁶ Though not specifically mentioned in the letter, not meeting the definition of a major disaster could play a role in declaration decisions. For example, Michigan Governor Rick Snyder's request for a major disaster declaration for the Flint water contamination incident was denied based on the grounds that it did not meet the definition of a major disaster. The denial letter sent from the FEMA Administrator to the governor stated the incident did not meet the legal definition of a major disaster because it was "not a result of a natural disaster, nor was it caused by fire, flood, or explosion."⁶⁷

⁶⁵ See CRS Report R46475, *The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues*, by Michael H. Cecire and Joseph V. Jaroscak.

⁶⁶ FEMA, "North Dakota—Civil Unrest, Denial," Preliminary Damage Assessment Report, May 18, 2017, p. 1, <https://www.fema.gov/media-library-data/1500312452287-414eb975c508f46a05f0d2666a693320/PDAReporDenialND.pdf>; FEMA, "Maryland—Civil Unrest, Denial of Appeal," Preliminary Damage Assessment Report, July 29, 2015, p. 1, <https://www.fema.gov/media-library-data/1441051207394-f545e3fcbcc33e36b70031f9b6f26e02/PDAReporAppealDenialMD.pdf>.

⁶⁷ Letter from W. Craig Fugate, FEMA Administrator, to Rick Snyder, Governor of Michigan, January 16, 2016; see **Figure E-1** of this report. The President issued an emergency declaration for the incident on April 25, 2016 (EM-3375); see <https://www.fema.gov/disaster/3375>.

Amendments to disaster relief laws suggest that the difficulty of obtaining a major disaster declaration for human-caused incidents is by design. As shown in **Figure 4**, Congress removed “or other catastrophe” from the definition of a major disaster in the Disaster Relief Act (the predecessor of the Stafford Act) and inserted “or, regardless of cause” in the Stafford Act’s definition.

Figure 4. Major Disaster Definition
Comparison of Disaster Relief Act and the Stafford Act

from the Disaster Relief Act (1974)	from the Stafford Act (1988)
<p>“Major disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.</p>	<p>“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.</p>

Source: 42 U.S.C. §5122.

Note: Highlights added to demonstrate definition differences. “Above and beyond emergency services by the federal government” was removed altogether from the definition.

According to the Senate report accompanying the bill, Congress removed “other catastrophe” because it had been broadly interpreted to justify federal assistance to “humanly caused” incidents. According to the Senate report

Congress intended the [the Disaster Relief Act of 1974] to alleviate state and local conditions caused by natural catastrophes. Although non-natural catastrophes are not specifically enumerated by Section 102 of the act, the phrase “other catastrophes” has been broadly interpreted to justify federal assistance in response to humanly caused traumatic events. The expansion of legislative intent in the administration of the Disaster Relief Act has provoked recent congressional concern.⁶⁸

The report further states that

Broadening the scope of the act to cover both natural and non-natural catastrophes has strained the capacity of programs designed to respond only to natural catastrophes. Within its intended context the act has functioned relatively well. It is comprehensive and flexible legislation, well-suited to handle the full range of natural disasters for which it was designed. It was not written, however, to respond to the occasionally catastrophic

⁶⁸ U.S. Congress, Senate Committee on Environment and Public Works, *Disaster Relief Act Amendments of 1988*, 100th Cong., 2nd sess., September 22, 1988, S.Rept. 100-524, p. 2.

consequences of social, economic, or political activity and establishes no administrative or programmatic mechanisms to do so.⁶⁹

Thus, Congress amended the definition to prevent the Stafford Act from being used to address an array of social issues. In general, human-caused incidents have been classified as “fires and explosions” which are specifically listed in the major disaster definition.⁷⁰ This could have implications for requests for assistance related to civil unrest incidents depending on the nature of the damages. It is conceivable that civil unrest could cause significant damage and loss of life without fires or explosions.

The major disaster declaration for the 1992 civil unrest in Los Angeles was framed in the context of a “California Fire During a Period of Civil Unrest.” In a letter to the *Los Angeles Times*, the FEMA Region IX Director stated that “FEMA made an exceptional effort to qualify the Los Angeles riots as a disaster under the Stafford Act, which does not include riot in its definition of ‘disaster.’”⁷¹

If Congress is concerned that the definition of a major disaster could potentially prevent civil unrest incidents from receiving federal assistance, it might consider amending the Stafford Act to include civil unrest. As mentioned, the Small Business Act includes the terms “civil disorders” and “riots.” Congress could consider amending the Stafford Act to include similar language:

... a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters ... **riots, civil disorders** or other catastrophes, except it does not include economic dislocations.⁷²

Some may disagree, arguing that amending the definition of a major disaster is not necessary because the major disaster declared in response to the 1992 criminal case verdict in the beating of Rodney King created a legal precedent for future major disaster requests. They may further argue that major disasters have been declared for other incidents that are not explicitly listed in the major disaster definition, such as for the COVID-19 pandemic. Others may disagree and assert that listing civil unrest in the definition is needed to eliminate ambiguity.

Major Disaster Declaration Designations

As mentioned previously, there are two potential challenges to states and localities seeking major disaster assistance: (1) the definition of a major disaster does not include explicit language such as “protest” or “civil unrest”; and (2) the nature and scope of the damages caused by civil unrest generally do not meet the per capita indicator cost threshold used to determine whether a major disaster declaration is warranted. If Congress wants to increase the likelihood a civil unrest incident receives a major disaster declaration, it could be argued that policy changes are needed to address one or both of these challenges.

Arguably, states and localities prefer major disaster declarations that designate IA and PA over other types of assistance because they authorize both short-term assistance (e.g., emergency food, medical assistance, and sheltering) and long-term assistance (e.g., reconstruction, assistance to individuals and households, and HMGP). In the case of civil unrest, funding for reconstruction

⁶⁹ Ibid.

⁷⁰ For example, human-caused incidents such as the September 11, 2001, terrorist attacks were classified as “fires and explosions,” rather than terrorism.

⁷¹ William Medigovich, “Federal Aid for Riot Victims,” *Los Angeles Times*, January 27, 1993, <https://www.latimes.com/archives/la-xpm-1993-01-27-me-1695-story.html>.

⁷² P.L. 100-590, 15 U.S.C. §632(k). Language in bold added.

projects and IA programs, such as crisis counseling, may be very useful to recovering communities.

The IA designation also makes the SBA Disaster Loan Program available to individuals and households, businesses, and nonprofit organizations. This may be particularly important to states and localities seeking federal assistance for damaged businesses. In addition to long-term recovery projects and assistance to individuals and households, major disaster declarations also authorize immediate, temporary assistance measures, including emergency medical assistance, food, and shelter.

PA-only major disaster declarations also authorize emergency measures but reconstruction is limited to public sector damages and HMGP. As described earlier in this report, only private nonprofit organizations are eligible for SBA disaster loans under a PA-only major disaster declaration. A PA-only major disaster may therefore be of limited value to communities with significant private sector damages.

Per Capita Indicator Cost Threshold

The governor or tribal chief executive's request for a presidential declaration of emergency or major disaster must include information about the actions and resources that have been or will be committed, and an estimate of the amount and severity of the disaster-caused damages.⁷³ For all but the most catastrophic events, this process is deliberative and involves accumulating information from several sources during the Preliminary Damage Assessment (PDA) process, where state, local, and federal officials estimate damages caused by an incident.⁷⁴

Once the PDA has been completed, the governor/tribal chief executive may submit a request for an emergency or major disaster declaration.⁷⁵ Specific "factors" are considered by FEMA when evaluating the need for supplemental federal assistance under the PA and IA programs.⁷⁶ The factors are initially used by FEMA to make recommendations to the President as to whether the incident warrants a Stafford Act declaration. Though FEMA uses the PDA findings to provide declaration recommendations, the President has the sole authority to issue a declaration or deny a request for federal assistance under the Stafford Act.⁷⁷ If declared, the factors are used to determine which assistance programs should be provided.

Historically, the key factor used for major disaster recommendations has been the "per capita indicator." FEMA will generally recommend a major disaster authorizing PA if public and nonprofit infrastructure damages exceeds a minimum per capita indicator at the state and local

⁷³ For a list and description of information requirements to accompany a governor or tribal chief executive's request for an emergency declaration and a major disaster declaration, see 44 C.F.R. §206.35 and 44 C.F.R. §206.36, respectively.

⁷⁴ For example, see the FEMA, "Request for Presidential Disaster Declaration: Major Disaster or Emergency," form, OMB Control Number 1660-0009, expires 09/30/2019, <https://www.fema.gov/media-library-data/1512409550714-752b7004a7c74c67a485a36551d7c889/FEMAForm010-0-13PresidentialDeclarationRequest.pdf> (note that the form expiration date has passed, but this is the form linked to on FEMA's "Request for Presidential Disaster Declaration Major or Emergency" webpage, <https://www.fema.gov/media-library/assets/documents/28122>). For more information on the Preliminary Damage Assessment (PDA) process, see FEMA, "Preliminary Damage Assessments," last updated December 6, 2019, <https://www.fema.gov/preliminary-damage-assessments>; see also CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

⁷⁵ For a more detailed description of the PDA process, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, by Bruce R. Lindsay and Elizabeth M. Webster.

⁷⁶ 44 C.F.R. §206.48.

⁷⁷ See 44 C.F.R. §206.48 and, for example, see FEMA, "Factors Considered When Evaluating a Request for IA," 84 *Federal Register* 10633.

level. The per capita is based on the latest U.S. census data. In FY2020, the statewide per capita indicator is \$1.53 and the countywide per capita indicator is \$3.84.⁷⁸ Public infrastructure damages must also exceed \$1 million across the state or territory, or \$250,000 across a tribe.⁷⁹

As noted above, although FEMA uses the PDA findings to provide declaration recommendations, the President has the sole authority to issue a declaration or deny a request for federal assistance under the Stafford Act.⁸⁰ Research of PDA reports, however, suggests that FEMA's recommendation is influential in declaration decisions⁸¹ and, in general, civil unrest incidents primarily damage businesses and cause comparatively little damage to public infrastructure.⁸² Consequently, they may not meet or exceed the per capita indicator.

Though research indicates the per capita indicator cost threshold influences declaration decisions, the role it plays in requests for civil unrest assistance is unclear. If the application of the per capita indicator cost threshold to civil unrest incidents is a concern, Congress could require FEMA to develop additional metrics to evaluate the impact of civil unrest incidents to mitigate the role the per capita indicator cost threshold plays in declaration decisions.

Individual Assistance Authorization

As mentioned, major disasters that authorize IA trigger FEMA programs that can help communities and individuals to recover after an incident and also make the SBA Disaster Loan Program available to eligible businesses and nonprofit organizations. FEMA evaluates IA "factors" to assess the disaster's severity, magnitude, and impact, as well as whether the incident has overwhelmed the affected jurisdictions' capabilities, when making IA recommendations to the President.⁸³

When considering the need for Individual Assistance pursuant to a governor's request, and in particular the Individuals and Households Program,⁸⁴ the principal factors considered are (1) Fiscal Capacity, which evaluates the state's ability to raise revenue for disaster response and recovery; and (2) Uninsured Home and Personal Property Losses, which considers the results of the PDA process to evaluate the extent of damage and estimated cost of assistance.⁸⁵ Uninsured Home and Personal Property Losses are also significant considerations when evaluating requests from tribal chief executives.⁸⁶ There is no set threshold used to determine whether FEMA will recommend that the President declare a major disaster authorizing IA.

⁷⁸ FEMA, "Per Capita Impact Indicator and Project Thresholds," <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

⁷⁹ 44 C.F.R. §206.48(a)(1)-(2).

⁸⁰ See 44 C.F.R. §206.48 and, for example, see FEMA, "Factors Considered When Evaluating a Request for IA," 84 *Federal Register* 10633.

⁸¹ See CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

⁸² Public infrastructure is infrastructure owned or available for use by the public such as bridges, roads, and government buildings.

⁸³ FEMA, "Factors Considered When Evaluating a Request for IA," 84 *Federal Register* 10632; see also FEMA, "Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster; Correction," 84 *Federal Register* 25685, June 4, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-06-04/pdf/2019-11656.pdf>; 44 C.F.R. §206.48(b); and FEMA, *Tribal Declarations Pilot Guidance*, pp. 34 and 36.

⁸⁴ The Individuals and Households Program (IHP) may provide housing assistance and other needs assistance.

⁸⁵ 44 C.F.R. §206.48(b).

⁸⁶ FEMA, *Tribal Declarations Pilot Guidance*, p. 8.

The nature and scope of damages associated with civil unrest pose potential challenges to states, territories, and tribes seeking assistance because they generally cause damage to businesses and public buildings rather than to residences. There are, however, IA programs that could be beneficial for civil unrest incidents, including in situations where there is not significant damage. For example, the Crisis Counseling Assistance and Training Program (CCP) can support the delivery of services in individual or group settings, which are “designed to help alleviate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.”⁸⁷

Congress amended the Stafford Act in December 2022 to allow CCP to be authorized pursuant to emergency declarations and could consider whether the Stafford Act should be further amended to allow additional forms of IA to be authorized pursuant to an emergency declaration (i.e., in addition to the IHP and CCP).⁸⁸ If Congress wishes to make IA programs such as CCP available to incidents without IA designations, it could consider making such assistance available to PA-only major disaster declarations. Further, Congress could consider making SBA disaster loans available to individuals and households, and businesses under a PA-only declaration.⁸⁹

Hazard Mitigation Grant Program Funding

Unlike IA and PA, there are no indicators, factors, or cost thresholds for determining whether or not HMGP funding is awarded following a major disaster declaration or the receipt of an Fire Management Assistance Grant (FMAG). Section 404(a) of the Stafford Act provides that

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 420.⁹⁰

State governors or tribal chief executives must submit a letter of intent to FEMA within 30 days of the major disaster declaration or receipt of an FMAG that notifies FEMA whether or not they will participate in the Hazard Mitigation Grant Program.⁹¹ Generally, the request to participate in HMGP is included as part of a request for a major disaster declaration or receipt of an FMAG; however, state and tribal chief executives are not required to provide any information to support their intention to participate in HMGP. For example, the template for a request for a major disaster declaration merely requires the state or tribal chief executive to indicate whether HMGP will be statewide or for particular areas, and to provide information about the date of the hazard mitigation plan.⁹² State agencies and federally recognized tribes must have a FEMA-approved

⁸⁷ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, FP 104-009-03, v. 1.1, May 2021, p. 203, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf (hereinafter FEMA, *IAPPG*).

⁸⁸ Stafford Act §502(a)(6), 42 U.S.C. §5192(a)(6), as amended by Section 7321 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263), which amended the Stafford Act to enable Crisis Counseling to be authorized pursuant to an emergency declaration.

⁸⁹ For a discussion about how designations determine what SBA disaster loans become available, see “Major Disaster Assistance: SBA.”

⁹⁰ P.L. 93-288, 42 U.S.C. §5170c. Section 420 is fire management assistance.

⁹¹ FEMA, *Hazard Mitigation Grants for Governments*, <https://www.fema.gov/grants/mitigation/hazard-mitigation/governments>.

⁹² See FEMA, *Request for Presidential Disaster Declaration Form*, https://www.fema.gov/sites/default/files/2020-04/presidential-declaration-request_fema-form_010-0-13.pdf, and FEMA, *Request for Presidential Disaster Declaration Cover Letter*, <https://www.fema.gov/disasters/request-for-presidential-disaster-declaration>.

state or tribal mitigation plan by the application deadline and at the time that HMGP funding is obligated.⁹³

An FMAG declaration is initiated when a state submits a request for assistance to the FEMA Regional Director at the time that a threat of major disaster exists. The entire process is intended to be accomplished on an expedited basis, with a FEMA decision within a matter of hours.⁹⁴ Unlike traditional HMGP funding, the availability of post-fire HMGP funding is not contingent on the presidential declaration of a major disaster.⁹⁵ Before FEMA can approve a state FMAG application, the grantee must have an approved state hazard mitigation plan that addresses wildfire risks and mitigation measures.⁹⁶

HMGP was made available for two major disaster declarations that were not associated with natural disasters: the 1992 Los Angeles riots⁹⁷ and the 2001 terrorist attack on New York.⁹⁸ California was eligible for \$777,004 for the disaster declaration for Los Angeles following the 1992 verdict in the criminal trial of the beating of Rodney King. FEMA obligated \$239,935 of this amount.⁹⁹ This could be considered as establishing precedent for HMGP funding for disasters unrelated to natural hazards. The fact that FEMA also committed \$306.95 million to New York for HMGP after 9/11, and obligated \$236.3 million, could be considered to reinforce the precedent of the 1992 Los Angeles civil unrest HMGP funding.¹⁰⁰ According to the Government Accountability Office (GAO), officials from New York requested less HMGP funds than they were eligible for so that they could use HMGP funding to reimburse other associated costs (for example, the cost of increased security that could not otherwise have been funded within provisions of the Stafford Act).¹⁰¹ In addition, former President George W. Bush reduced the percentage of the HMGP formula to 5% rather than 15% after the 9/11 attacks. According to FEMA officials, the agency recommended reducing the percentage of HMGP funds available to New York initially because it was unclear how much the disaster would cost.¹⁰²

Historically, FEMA has approved all applications for grants and other assistance if the applications meet the program requirements under the Stafford Act.¹⁰³ Between the introduction of HMGP in 1989 and the COVID-19 declarations in 2020,¹⁰⁴ there are no instances of a major disaster declaration where HMGP funding was not awarded.¹⁰⁵ In 2020, every state, territory, Washington DC, and the Seminole Tribe of Florida requested and received a major disaster

⁹³ FEMA, *Hazard Mitigation Assistance Guidance*, February 27, 2015, p. 45, https://www.fema.gov/sites/default/files/2020-07/fy15_HMA_Guidance.pdf.

⁹⁴ FEMA, *Fire Management Assistance Grants*, <https://www.fema.gov/assistance/public/fire-management-assistance>.

⁹⁵ FEMA, *FEMA Policy: Hazard Mitigation Grant Program—Post Fire Policy #207-088-2*, https://www.fema.gov/media-library-data/1557348381120-5dfb0abf4452a894721e6d7a9305ae1a/SignedPolicyFEMA_HMGP_Post-Fire_policy_207-088-2_508.pdf.

⁹⁶ FEMA, *Fire Management Assistance Grant Program Guide*, FEMA P-954, February 2014, p. 26, https://www.fema.gov/sites/default/files/2020-06/FMAG-guide-feb-2014_02-28-2014.pdf.

⁹⁷ DR-942, <https://www.fema.gov/disaster/942>.

⁹⁸ DR-1391, <https://www.fema.gov/disaster/1391>.

⁹⁹ Data provided by FEMA Congressional Affairs staff, September 22, 2020.

¹⁰⁰ *Ibid.*

¹⁰¹ GAO, *September 11: Overview of Federal Assistance to the New York City Area*, GAO-04-72, October 2003, p. 11 and p. 41, <https://www.gao.gov/new.items/d0472.pdf>.

¹⁰² *Ibid.*, p. 41.

¹⁰³ *Ibid.*, p. 85.

¹⁰⁴ FEMA, *COVID-19 Disaster Declarations*, <https://www.fema.gov/disasters/coronavirus/disaster-declarations>.

¹⁰⁵ Email from FEMA Congressional Affairs staff, November 10, 2020.

declaration for COVID-19. All but a few state requests for COVID-19 support included a request for HMGP assistance. All requests for COVID-19-related HMGP are still under review,¹⁰⁶ and no HMGP funding has been awarded for the COVID-19 declarations.

Congress may wish to consider establishing clear criteria to determine whether HMGP funding should be awarded, or to establish circumstances for which mitigation is not needed, or to require an explanation of why HMGP assistance is refused.

Expanding Available Types of Assistance for Emergency Declarations

If the objective of Congress is to ensure civil unrest incidents receive certain forms of assistance, then another potential policy option, in addition to those described above, is to expand the forms of assistance available under an emergency declaration.

In contrast to the definition of a major disaster declaration, which is narrowly defined, the definition of an emergency declaration is broad enough to not pose a definitional challenge to states and localities seeking assistance for civil unrest incidents. As mentioned previously, the assistance authorized by an emergency declaration may be considered by some as too limited. Following emergency declarations, the FEMA assistance provided is primarily PA emergency work (see **Table A-1**). When the President authorizes IA pursuant to an emergency declaration, until recently, the Individuals and Housing Program (IHP) was the only form of IA that could be authorized; however, this is uncommon. (Recently, the Stafford Act was amended to also allow CCP to be authorized pursuant to an emergency declaration).¹⁰⁷ Should the President declare an emergency under the Stafford Act for a civil unrest incident, it is more likely PA would be authorized due, in part, to the nature and scope of damages associated with civil unrest, which are generally to businesses and public buildings, rather than residences.

Emergency Definition

“Any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States” (P.L. 93-288, 42 U.S.C. §5122).

Congress could consider making FEMA reevaluate its considerations for recommending the authorization of IA pursuant to an emergency declaration for civil unrest. IHP authorized pursuant to an emergency declaration for civil unrest could make housing assistance, such as Home Repair Assistance, and forms of ONA, such as Personal Property, Transportation, Funeral, and Medical and Dental Assistance, available, which may be of particular help to individuals recovering from civil unrest.¹⁰⁸

¹⁰⁶ Ibid.

¹⁰⁷ According to FEMA, the IHP has been authorized pursuant to an emergency declaration three times since 1985 (email correspondence from FEMA Congressional Affairs staff, December 6, 2021), and in December 2022, Stafford Act Section 502(a)(6) was amended by Section 7321 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263) to enable Crisis Counseling to be authorized pursuant to an emergency declaration.

¹⁰⁸ Some types of FEMA assistance first require the applicant to apply for a disaster loan from the SBA. FEMA and the SBA collaborate in determining applicant eligibility for SBA-Dependent Other Needs Assistance (ONA). SBA-Dependent ONA is only available to individuals or households who do not qualify for an SBA disaster loan or whose SBA disaster loan amount is insufficient. The forms of SBA-dependent ONA are Personal Property Assistance, which provides funding to repair or replace eligible items damaged or destroyed as a result of a disaster, Transportation Assistance, which provides funding to repair or replace a vehicle damaged by a disaster, and a Group Flood Insurance Policy certificate (FEMA, *IAPPG*, p. 166). For more information on the process of determining whether an applicant

In addition, there are IA programs that could benefit recovery efforts following civil unrest incidents, such as CCP, which is available pursuant to either an emergency or major disaster declaration authorizing IA.¹⁰⁹ Congress could consider amending the Stafford Act to allow additional forms of Individual Assistance—in addition to the IHP and CCP—to be authorized pursuant to emergency declarations. Congress may also wish to make such forms of assistance available following PA-only major disaster declarations. Congress could also consider expanding disaster loan eligibility under an emergency declaration to include businesses, individuals, and households.

COVID-19 Considerations

The adverse economic impact of civil unrest combined with the COVID-19 pandemic has placed a tremendous economic burden on some businesses.¹¹⁰ The problem may be compounded as business interruption insurance claims are denied.¹¹¹ To address this issue, Congress could consider measures that allow noninsured costs from civil unrest to be an eligible and forgivable expense in the SBA's Paycheck Protection Program.¹¹² Examples of these measures include H.R. 7451 and S. 4135 introduced in the 116th Congress. Congress could also consider providing additional relief to businesses damaged by both civil unrest and COVID-19. For example, Congress could introduce measures similar to those provided under the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136, the CARES Act) for struggling business such as loan deferrals and loan forgiveness, and expanded eligibility.

Public Assistance for Law Enforcement

Congress may wish to address current federal assistance for law enforcement pursuant to a declaration of emergency or major disaster declaration under the Stafford Act.

The Stafford Act currently authorizes FEMA to direct Department of Defense resources at the request of a state or tribe for “any emergency work which is made necessary by such incident and which is essential for the preservation of life and property.”¹¹³ Additionally, FEMA guidance interprets emergency protective measures authorized to receive federal assistance in Sections 402, 403, and 502 of the Stafford Act to include “security, barricades, and law enforcement” pursuant to Stafford Act emergency or major disaster declarations, including the activation of National Guard troops to State Active Duty.¹¹⁴ As a result, a Stafford Act declaration authorizing PA for emergency protective measures for episodes of civil unrest may provide assistance for state,

may qualify for an SBA disaster loan and how FEMA ONA assistance and SBA disaster loans intersect, see CRS Report R45238, *FEMA and SBA Disaster Assistance for Individuals and Households: Application Processes, Determinations, and Appeals*, by Bruce R. Lindsay and Elizabeth M. Webster.

¹⁰⁹ Stafford Act §502(a)(6), 42 U.S.C. §5192(a)(6).

¹¹⁰ Katherine Chiglinsk, Michael Sasso, and Steven Church, “Businesses Hurt First by Coronavirus Then by Looting Have New Insurance Questions,” *Insurance Journal*, June 5, 2020, at <https://www.insurancejournal.com/news/national/2020/06/05/571116.htm>.

¹¹¹ Several disputes for denied claims are currently being litigated. Thus far, it appears that the courts are generally siding with the insurance companies.

¹¹² For more information on SBA's Payroll Protection Program, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.

¹¹³ P.L. 93-288, U.S.C. §5170b(c).

¹¹⁴ FEMA, *PAPPG*, 110-111; 87.

tribal, territorial, and local law enforcement—along with emergency medical care, emergency food and water, and other essential services.

Some Members of Congress have raised concern regarding the actions of state, local, and federal law enforcement agencies in response to protests and civil unrest.¹¹⁵ Given this interest, Congress may wish to exercise its oversight authority and solicit additional information from FEMA on agency approval of assistance for law enforcement or the deployment of federal personnel for law enforcement activities. Congress may also wish to review and amend the Stafford Act to specify the eligible law enforcement activities or entities eligible for federal assistance.¹¹⁶ Congress may also consider separating authorization of PA for law enforcement activities from assistance for other emergency protective measures, or limiting authorization for law enforcement assistance to particular types of incidents (e.g., environmental hazards) exclusive of episodes of civil unrest.

Concluding Policy Observations

As Congress contemplates federal assistance for civil unrest, it could consider whether the Stafford Act meets the recovery needs for civil unrest incidents, or if it should be amended to make federal assistance more readily available. Some might argue the existing framework is inadequate to meet civil unrest recovery needs, makes assistance too difficult to obtain, or both. If Congress believes this to be the case, it could explore policy options that may help make Stafford Act assistance more accessible to states and localities.

In contrast, others might argue that the existing framework meets state and local recovery needs for incidents of civil unrest. To support this position they may argue that

- The definition of a major disaster under the Stafford Act was designed to keep federal assistance limited to natural disasters and prevent its use for the consequences of social, economic, or political activity. According to this view, civil unrest incidents are social and often political, and federal assistance under the Stafford Act is therefore inappropriate for these types of incidents.
- Current cost thresholds and other factors that are used to determine if federal assistance is warranted appropriately prevents marginal incidents from receiving federal assistance. According to this view, assistance for marginal incidents should be provided by states and localities rather than the federal government.
- Individuals, households, nonprofit organizations, and businesses have a responsibility to obtain and maintain adequate insurance coverage. In this view, providing federal assistance in these circumstances creates a moral hazard because some may forgo insurance, or reduce their insurance coverage, if they believe that federal assistance is a viable replacement.
- The existing framework is consistent with the intent of the Stafford Act which is to provide assistance to human-caused incidents only in rare circumstances. This approach is consistent with the view that the federal government is not the first responder, nor is it the primary source of assistance to areas stricken by civil unrest. Federal resources, in this view, are intended to supplement those of state and local governments, the private sector, and voluntary efforts.

¹¹⁵ See, for example, U.S. Congress, House Armed Services Committee, *Department of Defense Authorities and Roles Related to Civilian Law Enforcement*, 116th Cong., 2nd sess., July 9, 2020.

¹¹⁶ For a current list of eligible activities in statute, see Stafford Act §§402, 403, and 502, 42 U.S.C. §§5170a-5170b, 5192.

If Congress believes some or all of the above arguments to be the case, it may decide to keep the existing framework in place with few (if any) modifications or amendments.

Appendix A. FEMA Assistance

Table A-1. FEMA Assistance Available Under Stafford Act Declarations

	Emergency Declaration	Major Disaster Declaration
Public Assistance (PA)	<i>Emergency Work</i> Category A—Debris Removal Category B—Emergency Protective Measures	<i>Emergency Work</i> Category A—Debris Removal Category B—Emergency Protective Measures <i>Permanent Work</i> Category C—Roads and Bridges Category D—Water Control Facilities Category E—Buildings and Equipment Category F—Utilities Category G—Parks, Recreational, Other
Individual Assistance (IA)	Individuals and Households Program (IHP) Crisis Counseling Program	IHP Crisis Counseling Program Disaster Case Management Disaster Unemployment Assistance Disaster Legal Services Disaster Supplemental Nutrition Assistance Program
Hazard Mitigation Assistance (HMA)	Not Available	Hazard Mitigation Grant Program

Source: Developed by CRS based on the Federal Emergency Management Agency's (FEMA's) webpage on "How a Disaster Gets Declared," <https://www.fema.gov/disasters/how-declared>.

Appendix B. CDBG Eligible Activities

Table B-1. General Categories of Assistance

General Categories	Eligible Activities
Planning, administrative and technical assistance	<ul style="list-style-type: none"> comprehensive planning and related activities; administrative costs associated with carrying out the program's requirements, as well as other HUD programs; provision of technical assistance to public or nonprofit entities; payment of the nonfederal share of other federal grant programs; and development and implementation of energy conservation and use strategies.
Public works and public facilities	<ul style="list-style-type: none"> acquisition and rehabilitation of real property that may be used for public works, open space acquisition, historic preservation, or other public purposes; acquisition, construction, reconstruction, or installation of public works, public facilities, neighborhood facilities, senior centers, centers for the handicapped, recreation facilities, and street lights; and removal of architectural barriers to the elderly and handicapped.
Economic development and neighborhood revitalization	<ul style="list-style-type: none"> payment to for-profit entities in support of economic development; assistance to neighborhood-based organizations, including community development corporations, in support of economic development, housing assistance; or neighborhood revitalization activities; assistance, including loans and grants, to nonprofit entities in acquiring real property, or acquiring or rehabilitating public facilities, site improvements, utilities, or commercial and industrial facilities and improvements; micro-lending; brownfield redevelopment; and creation of revolving loan funds.
Public services	<ul style="list-style-type: none"> public services (limited to no more than 15% of an entitlement community or state's annual allocation).
Housing-related activities	<ul style="list-style-type: none"> rehabilitation of housing owned and occupied by low- and moderate-income persons; repair of housing units acquired through tax foreclosures; assistance to facilitate homeownership among low- and moderate-income persons;

General Categories	Eligible Activities
Acquisition, demolition, and disposition of real property	<ul style="list-style-type: none">• housing services, including counseling, in connection with the HOME program; and• lead-based paint abatement.• acquisition of real property;• disposal of real property;• code enforcement in deteriorated or blighted areas; and• clearance, demolition, and rehabilitation and renovation of privately and publicly owned buildings, including closed public schools.

Source: 42 U.S.C. §5305.

Appendix C. Public and Individual Assistance Factors

Table C-1. Factors Considered for a Governor's Request for a Major Disaster Authorizing Public Assistance

Estimated Cost of Assistance
The Local Impacts of the Incident
The Extent and Type of Insurance in Effect to Cover the Losses
Hazard Mitigation Measures Taken by the State and/or Local Governments
Recent Disaster History in the State
Assistance Available from Other Federal Programs and Other Sources

Sources: Based on CRS interpretation of 44 C.F.R. §206.48(a); and Federal Emergency Management Agency, *Public Assistance Program and Policy Guide*, Version 4, (FP 104-009-2), June 1, 2020, p. 22.

Notes: These factors are also used to evaluate the need for assistance under FEMA's Public Assistance program.

Table C-2. Factors Considered for a Governor's Request for a Major Disaster Authorizing Individual Assistance

State Fiscal Capacity and Resource Availability
Uninsured Home and Personal Property Losses
Disaster Impacted Population Profile
Impact to Community Infrastructure
Casualties
Disaster Related Unemployment

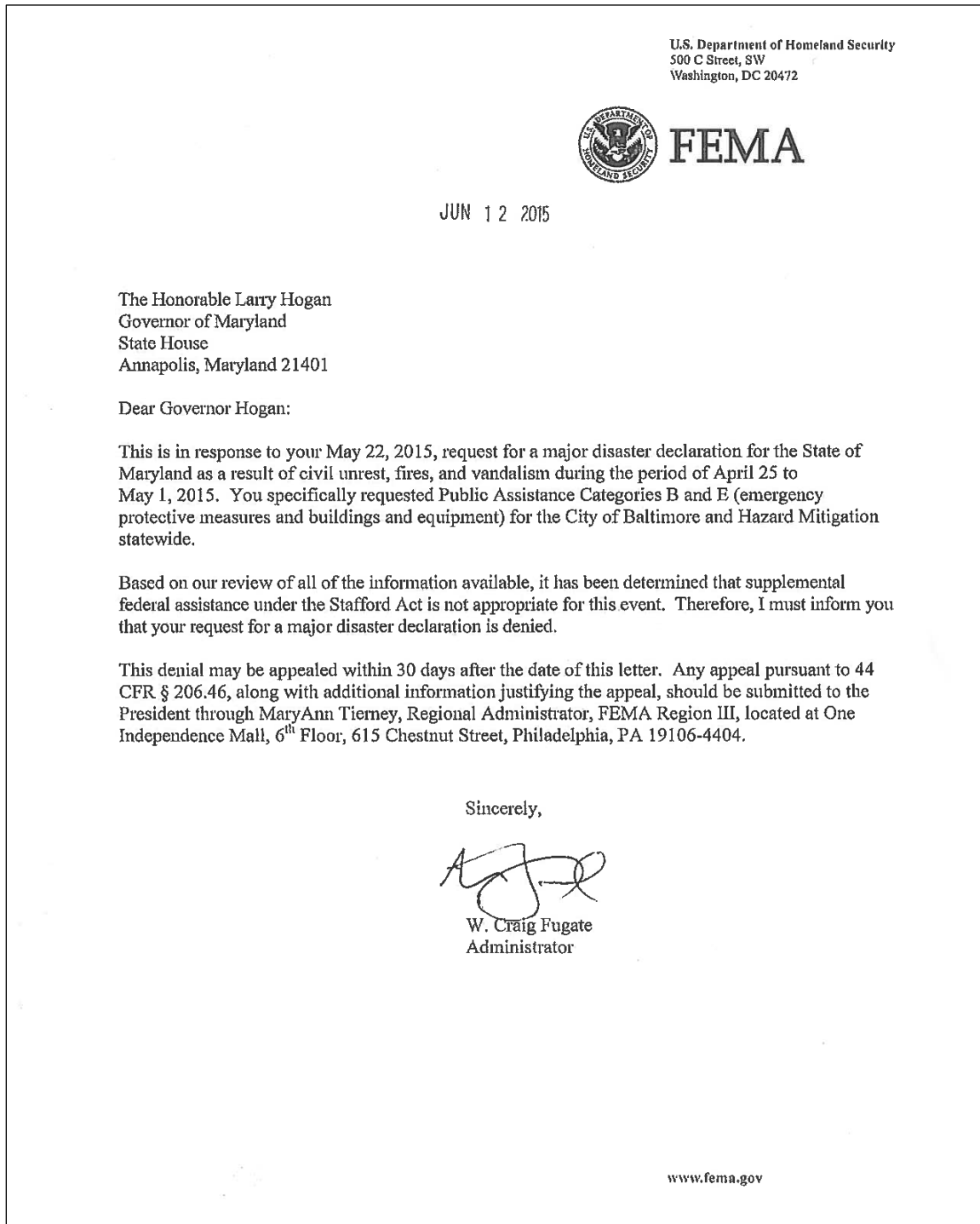
Sources: Based on CRS interpretation of 44 C.F.R. §206.48(b); Federal Emergency Management Agency, "Factors Considered," 84 *Federal Register* 10633; and FEMA, *Individual Assistance Declarations Factors Guidance*, June 2019, p. 3, <https://www.regulations.gov/docket?D=FEMA-2014-0005>.

Note: Different factors are used to evaluate tribal requests. See FEMA's Tribal Declarations Pilot Guidance, <https://www.fema.gov/sites/default/files/2020-04/tribal-declaration-pilot-guidance.pdf>.

Appendix D. Maryland Major Disaster Denial

Figure D-1. FEMA Denial Letter: Civil Unrest in Baltimore, Maryland

June 12, 2015

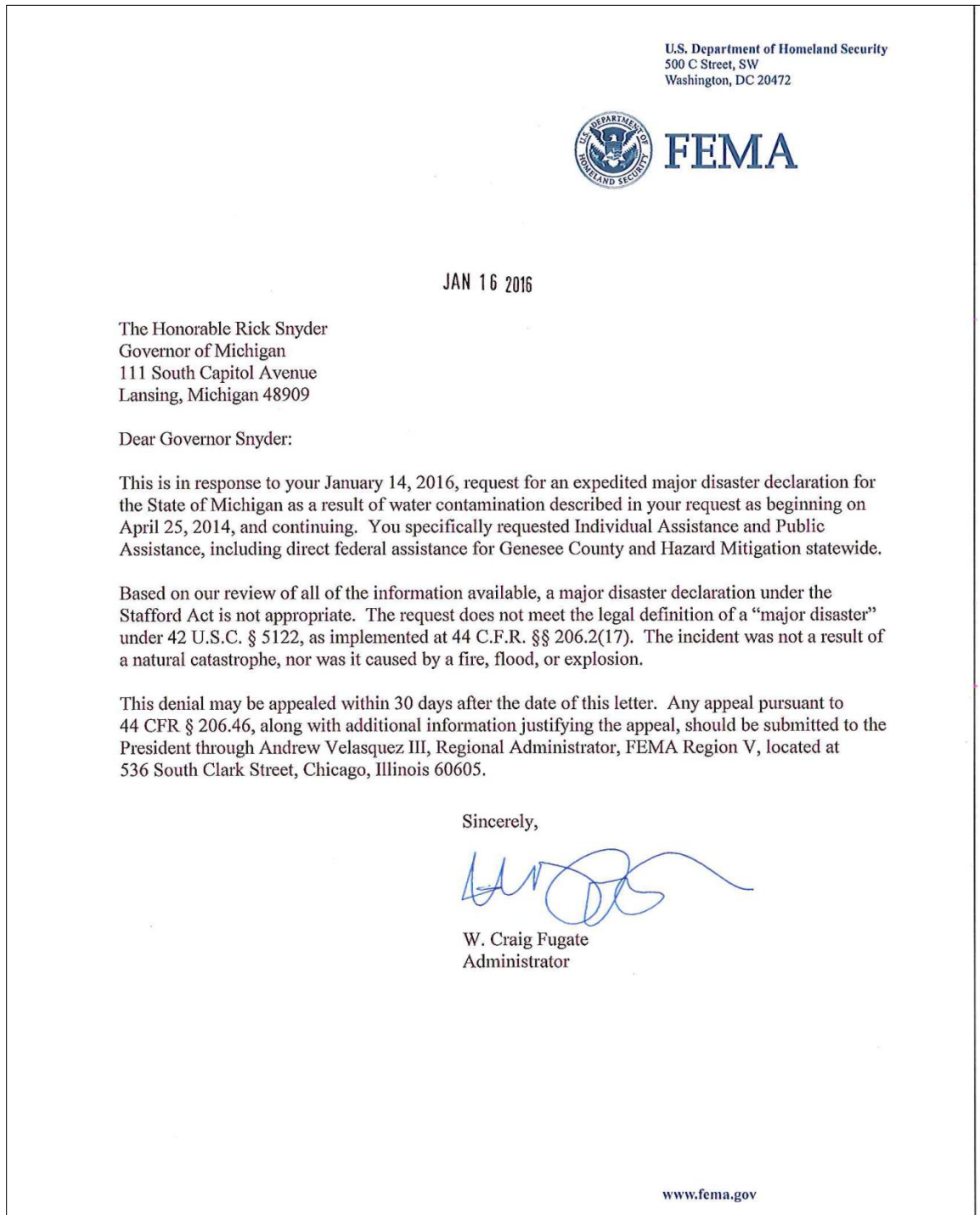


Source: Letter from W. Craig Fugate, FEMA Administrator, to Larry Hogan, Governor of Maryland, June 12, 2015.

Appendix E. Flint Major Disaster Denial

Figure E-1. FEMA Denial Letter: Flint Water Contamination Incident

January 16, 2016



Source: Letter from W. Craig Fugate, FEMA Administrator, to Rick Snyder, Governor of Michigan, January 16, 2016.

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