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Recovering Funds from Parties Liable: Stafford Act Authorities

Introduction

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act; P.L. 93-288, as amended, 42 U.S.C. §§5121 et seq.) authorizes the President to provide federal response, recovery, and mitigation assistance for emergencies and major disasters. The President has delegated most Stafford Act authorities to the Federal Emergency Management Agency (FEMA). Section 317(a) of the Stafford Act enables the federal government to recover funds from parties liable for an emergency or major disaster, as follows:

Party Liable—Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court (Section 317(a); 42 U.S.C §5160(a)).

Some recent disasters have renewed interest in authorities like Section 317(a) that establish financial liability for disaster-related losses.

Background and Legislative History

The federal government did not have specific statutory authority to recover funds from liable parties responsible for major disasters declared under the Disaster Relief Act of 1960 (which preceded the Stafford Act). This caused controversy when President John F. Kennedy declared major disasters under that act to provide assistance to remove a barge transporting liquid chlorine abandoned by Wyandotte Transportation Co. The federal government sued Wyandotte Transportation Co. to recover funds expended on the barge removal and cleanup. In *Wyandotte Transportation Co. v. United States*, 389 U.S. 191, Wyandotte argued, and the U.S. Supreme Court agreed, that the Disaster Relief Act of 1960 did not authorize the government to reclaim funds from parties found liable for a presidentially-declared disaster. The Court held that the U.S. *could* recover its clean-up expenses in this case under a different statute, the Rivers and Harbors Act of 1899.

The issue of financial liability for emergencies and disasters regained momentum after President Jimmy Carter declared emergencies for several “man-made” incidents, including the chemical contamination of the Love Canal community by Hooker Chemical Company in 1978-79. The enactment

of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, P.L. 96-510) established financial liability for certain parties held responsible for releases of hazardous substances into the environment. While CERCLA established a liability framework for releases of hazardous substances, debate continued over the unresolved issue of liability for the full scope of disasters declared under the Disaster Relief Act.

The language in Section 317(a) first appeared in 1981 (S. 1216, 97th Congress). Then-FEMA Director Louis O. Giuffrida testified that the bill would “solidify the ability of the Federal Government to recover Federal funds where disaster situations have been caused or aggravated by attributable entities” (Committee on Environment and Public Works, Hearing on S. 1216, S. 1217 and S. 2250, 97th Congress, 1st session, July 16 and 21, 1981). However, some raised concerns that proposals like S. 1216 could enable the federal government to hold state or local governments liable for failure to mitigate known hazards, or for their efforts during the course of disaster response.

Following seven years of debate, Section 317(a) was enacted on November 23, 1988, as part of the suite of revisions codified as the Stafford Act. A second provision, 317(b), specified that a person providing care or assistance in response to a disaster could not be held liable for the results of those actions, and was intended to redress the concerns that nonfederal governments might be held liable for inadequate response measures (42 U.S.C §5160(b)).

Implementation

To recover costs under Section 317(a) from a potentially liable party, the United States must file a claim in an appropriate federal court. The U.S. Government Accountability Office (GAO) reported that FEMA’s Office of Chief Counsel considers a number of factors before pursuing a claim, including:

- Whether an intentional act (or omission) can be shown to have caused an emergency or major disaster. FEMA reports that the agency relies on federal investigations to determine cause and intentionality.
- The time and cost of litigation vs. the likelihood and size of a potential award.
- How recovered assistance may affect survivors and/or the agency. For example, FEMA may consider the solvency of the alleged responsible party and how that may affect recovery of funds. (GAO-24-106558)

FEMA could also recover funds from entities who received Stafford Act assistance in certain cases. FEMA reported to

CRS that in cases where there is a party liable for causing disaster-related damages, “the onus is on the entity or persons who suffered damage and loss to pursue legal remedies.” If an entity recovered funds from such a liable party and received disaster assistance for the same costs, FEMA would require the entity to return funds to FEMA, per Stafford Act Section 312 (42 U.S.C §5155, which prohibits the provision of federal assistance for costs covered by private insurance or other sources). For example, FEMA could recover funds from nonfederal governments and nonprofits who receive awards through the Public Assistance program and later receive settlements from liable parties to cover the costs of the same damage for which Public Assistance was provided.

Statute limits FEMA’s authority to recover funds from individuals who receive Stafford Act assistance and subsequently recover funds from a third party in litigation. Such funds may be considered a duplicative overpayment that constitutes a debt owed to FEMA. However, Section 5602(a)(1) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263) directed FEMA to waive debts owed to the United States by individuals or households that received Stafford Act assistance “if such assistance is subject to a claim or legal action,” including those specified under Section 317(a).

Relevant Incidents and Invocations

California Wildfires, 2015-2018

On October 17, 2019, FEMA filed three claims in the Pacific Gas & Electric Co. (PG&E) Chapter 11 bankruptcy case pending in the U.S. Bankruptcy Court for the Northern District of California following findings by the California Department of Forestry and Fire Protection that PG&E transmission lines caused the fires. FEMA pursued \$3.9 billion to recover the costs of assistance provided in response to the 2015 Butte Fire, the 2017 California Wildfires, and the 2018 Camp Fire, in accordance with Section 317(a) and Section 312 of the Stafford Act.

In this case, FEMA explained that as a responsible steward of public funds, it was required to pursue recovery of such assistance, including from survivors whose settlement funds duplicated Stafford Act awards.

Backlash from elected officials and survivors followed FEMA’s announcement. Forty Members of the House of Representatives wrote then-FEMA Administrator Peter Gaynor requesting that FEMA reconsider its decision to pursue funds from the PG&E settlement, given that the action could reduce survivors’ claims.

FEMA later settled its claim for a reduced amount of \$1 billion to be paid from the Fire Victim Trust Fund established to compensate tort victims that filed claims in the bankruptcy. FEMA subordinated its claim to individual wildfire survivors, and reports that it expects to complete this process by the end of 2024. FEMA reports that it has not taken any other actions to recover disaster assistance costs of these wildfires under Section 317(a).

2021 Surfside Condominium Collapse

GAO investigated the potential invocation of Section 317(a) to recover assistance provided under the Stafford Act emergency declaration for the Surfside Condominium Collapse in June 2021. FEMA reported that the agency would collaborate with the Department of Justice to determine whether it may file a claim if a person intentionally caused the building to collapse, but not if investigations found the collapse was attributed solely to negligent design or maintenance (GAO-24-106558).

Maui 2023 Wildfires

Following wildfires in August 2023, the County of Maui filed suit against Hawaiian Electric Companies and Maui Electric Company, alleging that the entities “caused and/or contributed to the ignition and spread of the Maui Fires and the failure to warn the public of same.” In the event that a party is found liable for intentionally causing the wildfires, FEMA could attempt to recover assistance provided to state and local government entities and nonprofits. FEMA wrote to CRS that a finding of “negligence would not trigger application” of Section 317(a) as the authority is limited to parties who intended to cause conditions that resulted in an emergency or disaster.

Policy Considerations

The history and implementation of Stafford Act Section 317(a) may be relevant to debates over whether the federal government can—and should—attempt to recoup costs of federal assistance from parties held liable for disasters. Considerations include:

High Threshold for Implementation

The statute requires that the agency can only recover costs if an intentional act or omission caused a condition that resulted in a specific declared emergency or disaster—a requirement that has “rarely been met” (GAO-24-106558). This high standard may help third parties manage their legal and financial risks as they operate in areas prone to disasters in a warming climate (e.g., utilities serving rural areas prone to wildfires during hotter, drier summers). By the same logic, the provision may not incentivize potentially liable parties to mitigate the risk of causing an expensive disaster, or minimize the financial risks borne by the government in such cases. The challenges of implementing Section 317(a) may additionally raise concern over FEMA’s ability to responsibly steward federal disaster relief funds.

FEMA’s Reputation and Recovery of Assistance

FEMA’s attempt to recover funds from the 2015-2018 wildfires in California sparked criticism, including from survivors and their representatives. Some Members of Congress warned that FEMA’s claims upon the PG&E settlement “betray[ed] ... promises” made to survivors, and could thus diminish “FEMA’s reputation as an honest and fair partner.” The waiver enacted in the James M. Inhofe National Defense Authorization Act may help FEMA avoid future controversies surrounding the potential to recover assistance provided to individual survivors. FEMA may still face criticism for pursuing claims on the basis of assistance provided to disaster-affected governments and nonprofits.

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