

An Historical Perspective on Federal Funding for Natural Disasters

Legislation Controlling Federal Assistance Funding

The Stafford Act of 1974

In 1974, Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act").¹ This statute superseded the Disaster Relief Act of 1970 and now controls federal funding to alleviate the affects of U. S. natural disasters.

Under the Stafford Act, Congress authorized federal funding for two types of occurrences: major disasters and emergencies. Both require that the state's governor must request federal assistance and the President must determine that the "severity and magnitude" of the occurrence make effective response beyond the state's capability. A major disaster declaration affords more assistance to the state; triggering, for instance, the ability of individuals to receive unemployment compensation, food, and cash grants. An emergency declaration, on the other hand, provides the state with more limited assistance, such as access to federal resources and personnel, to meet a specific need, such as search and rescue, and debris removal.²

The Act requires property owners who receive federal disaster assistance to purchase property insurance protection against future losses from disasters.³ A state receiving disaster assistance may elect to self-insure state property against future losses, but if it elects that option it is ineligible to receive future disaster assistance for that property, if insurance protection was readily available.⁴

The Act originally placed no limitation on the amount of federal funding that could be made available and no cost-sharing burden on the state receiving disaster assistance.

¹ 42 U.S.C. § 5121 et seq.

² U. S. Library of Congress. Congressional Research Service. "A Descriptive Analysis of Federal Relief, Insurance, and Loss Reduction Programs for Natural Hazards," Malcolm Simmons, No. 94-195 ENR, March 1, 1994.

³ Id. at § 5154(a).

⁴ Id. at 5154(c).

1988 Amendments

The government administers the Stafford Act through the Federal Emergency Management Agency. By 1986, it was providing approximately 75 percent of the costs of disaster cleanup, although under the Act the federal share can reach 100 percent. In April of 1986, however, FEMA proposed a rule that would have required a state to meet certain "economic capability factors" to determine its eligibility for disaster assistance.

The result of this rule would have been to shift more of the costs of cleanup to state and local governments. Congress responded by passing a law delaying implementation of the rule for eighteen months. Then, in 1988, it amended the Stafford Act to clarify the amount of assistance the federal government was required to provide.

The 1988 amendments make it clear that the federal government's share of major disaster and emergency funding is to be "not less than" 75 percent of the damage caused.⁵ The government's share of emergency assistance can rise to 100 percent for the first ten days of an emergency up to a limit of \$5 million. The dollar limitation can be waived or increased if the President determines that: (1) continued emergency assistance is immediately required; (2) there is a continuing and immediate risk to life, property, health, or safety; and (3) the necessary assistance will not otherwise be provided on a timely basis. The federal government is also responsible for 100 percent of the costs of temporary housing assistance⁶ and "associated expenses" incurred by a state through the process of requesting and administering disaster assistance.⁷

The amendments also deleted a provision in the 1974 Act which had required a state receiving assistance to certify that its expenditures would constitute a "reasonable amount."

The President is also authorized to lend or advance to a state, at market rate interest, the state's share of disaster assistance.⁸ Furthermore, authorization is made for the President to forgive repayment of the advance, but only if the state cannot repay "without unreasonably straining its fiscal ability."

It is clear from the statutory changes and legislative history of the 1988 amendments that Congress intended the federal government to pay the majority of costs associated with natural disasters. As the House Appropriations Committee stated in a 1991 report accompanying emergency supplemental appropriations, "it has long been accepted that our Federal Government owes it to the people of the Nation and to itself to meet dire emergencies which arise because of natural disasters which endanger the economy, and if not corrected, will result in economic disaster to the Nation."⁹

On the other hand, Congress still intended that the states share in the responsibility of responding to natural disasters. A cost-sharing burden was placed on the state, albeit a maximum of 25 percent.¹⁰ Additionally, the Act requires the state's governor to "take appropriate response action under State law and direct execution of the State's emergency

⁵ 102 Stat. 4697, § 106(a)(3) (1988), codified at 42 U.S.C. § 5170(b) and (c)(4).

⁶ The government's share of temporary housing at mobile home sites, however, is limited to 90 percent, in order to encourage the states to choose site locations with lower utility installation costs.

⁷ 102 Stat. 4697 at § 106(b).

⁸ *Id.* at § 319.

⁹ H. R. Rep. No. 255, 102nd Cong., 1st Sess. 4 (1991).

¹⁰ 102 Stat. 4697 at § 106(a)(3).

plan."¹¹ The state must also "furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disasters."¹²

Administrative Waiver of State's Cost-Share

According to FEMA, at the time of the 1985 West Virginia floods, West Virginia requested that the federal government increase its cost-share above the usual 75 percent, because of the extreme hardship that paying its 25 percent cost-share would place on the state. FEMA administratively negotiated an agreement with West Virginia to provide 90 percent of the disaster assistance, because the estimated total cost of the disaster exceeded an average cost of \$64 per state citizen, based on the state's entire population. Since that time, FEMA has continued to pay 90 percent where the costs of a disaster exceed the \$64 per capita figure.

Increases In Number and Magnitude of Disasters

From 1970 to 1973, 111 major disasters were declared in 41 states; from 1985 to 1989, 119 disasters were declared. From 1990 to 1994, however, there were 195 declared disasters. These latest disasters represent an increase of 67 percent over the 1985-89 period, and 76 percent over the 1970-73 period. From 1979 to 1993, the federal government provided disaster assistance and loans of over \$130 billion.

Between 1812 and 1986, California suffered damages of approximately \$2.7 billion from earthquakes. For the 1994 Northridge Earthquake alone, however, damages

11 Id. at § 401.

12 Id.

exceed \$25 billion, and the government's assistance is expected to exceed \$13 billion after enactment of the FY 1995 supplemental appropriation.

There is no question that the number and magnitude of disasters has increased in recent years. According to FEMA, this phenomena is primarily attributable to natural causes, not to a lessening of the criteria used to make a disaster declaration. Even after factoring out increases in population and property density, inflation, and repair and reconstruction costs, FEMA concludes that the increase in federal funding for disaster assistance is the result of a greater number of natural disasters occurring over the last several years. Whether this trend will continue, therefore, cannot be adequately assessed.

Recent Legislative Developments

In past years, appropriations for natural disasters have been requested by the President primarily on an as needed basis after a major disaster is declared. Historically, the supplemental appropriations request has been designated an "emergency" and, therefore, not subject to offsetting budget cuts under the Budget Enforcement Act of 1990. This year, however, in considering further supplemental appropriations for the Northridge Earthquake, Congress decided that offsets must be found, regardless of the emergency designation given the President's request. This precedent, a byproduct of the move to balance the budget and eliminate the federal deficit, is expected to be followed in the future and makes it all the more important to consider alternatives to the historical manner in which the federal government has addressed disaster relief.