

Background

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Federalizing Disasters Weakens FEMA— and Hurts Americans Hit by Catastrophes

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Abstract: *The Federal Emergency Management Agency has been responding to almost any natural disaster around the country, be it a contained three-county flood, or a catastrophe of near-epic proportions like Hurricane Katrina. As a result, many states and localities have trimmed their own emergency-response budgets, often leaving them ill prepared to handle even rain- or snowstorms without federal assistance. This leaves FEMA stretched far too thin and ill prepared to respond to grand-scale catastrophes. The “federalization of disasters” misdirects vital resources, leaving localities, states, and the federal government in a lose-lose situation. FEMA policies must be overhauled to let localities handle smaller, localized disasters, and to allow FEMA to respond fully and effectively when it is truly needed. If the status quo continues, it will be a disaster for everyone.*

Since 1993, the Federal Emergency Management Agency (FEMA) has been federalizing “routine” natural disasters—such as floods, fires, and storms—that had historically been dealt with entirely by state and local governments.¹ Because of this federalization of routine disasters, two consequences emerged. First, many state and local governments cut funding to their own emergency management, thereby rendering themselves less prepared to handle natural disasters. Second, FEMA spends too much time responding to routine natural disasters and not enough time preparing for catastrophic natural disasters—such as hurricanes, earthquakes, or volcanic eruptions, which could have a national impact—thereby increasing the

Talking Points

- Since 1993, the Federal Emergency Management Agency (FEMA) has been federalizing routine natural disasters that had historically been handled entirely by state and local governments.
- As a result, state and local governments cut funding to their own emergency management programs, thereby rendering themselves less prepared to handle routine disasters like floods, fires, or storms.
- FEMA then spends too much time on routine natural disasters, doing what states and localities did for themselves before 1993.
- The outcome is that FEMA does not spend enough time preparing for catastrophic natural disasters—increasing the likelihood that the federal response for the next catastrophe will be insufficient, as it was during Hurricane Katrina.

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likelihood that the federal response for the next catastrophic event will be insufficient.

Examining the recovery efforts in Louisiana in the five years since Hurricane Katrina devastated New Orleans and many Gulf Coast communities, a third consequence of FEMA's federalization of natural disasters has become evident: Vital resources are increasingly diverted to responses to routine natural disasters.

Congress should establish clear requirements that limit the situations in which federal emergency declarations can be issued, while eliminating certain types of disasters from FEMA's portfolio altogether. These actions, coupled with changes in the public assistance program that reflect the on-the-ground fiscal challenges of the affected areas, would help states and localities to better recover when catastrophe strikes.

Sizing Up the Problem

Unless one has personally experienced a catastrophe, one cannot fathom the depth and breadth of the devastation that can occur. Hurricane Katrina, by any measurable standard, was a catastrophe. Based on FEMA's top ten list of costliest disasters since 1954, Hurricane Katrina is by far the most expensive.²

In fact, the recovery cost for Hurricane Katrina will be more than the cumulative costs for the other nine disasters on the list combined. Hurricane Rita, which struck 30 days after Katrina, is fourth on the top ten list. Hurricanes Gustav and Ike (which only barely missed the top ten list), struck Louisiana three years later. This means that Louisiana is now recovering from the collective damages of four of the worst natural disasters in recorded history. The recovery efforts have overwhelmed the local communities, the state of Louisiana, and the federal government.

Funding from FEMA's Public Assistance Grant Program (in operation since 1988) for Hurricane Katrina and Hurricane Rita is estimated to be over \$12 billion. The average total Public Assistance Obligation funding per major disaster is only \$58 million.³ Louisiana has 16 individual government agencies that each receive more than \$58 million in funding, and at least three entities that each receive more than \$500 million in funding. More than 22,000 projects rely on funding from the Public Assistance Grant Program for repairs of damaged property. Of these, 10,994 projects are categorized as "large projects," requiring at least \$55,600 each.

All 120 public school campuses in the city of New Orleans were damaged or destroyed during Hurricane Katrina and will require an estimated \$2.6 billion to restore. The Louisiana Office of Facility Planning and Control is responsible for the repairs or replacement of more than 1,700 damaged facilities. More than 25,000 homes and business were destroyed in a five-parish area. Only one building remained standing in Cameron Parish in the wake of Hurricane Rita. Roughly 80 percent of New Orleans was inundated by toxic waters for several weeks. Nearly every fire station and police station in the parishes surrounding New Orleans was destroyed or rendered functionally impaired.

In the aftermath of a disaster, the focus is normally on response—saving lives and property. But recovery, which follows thereafter, can be a much more difficult process—restoring services and attempting to make the community operate again—and it is bewildering to even know where to begin. Local staff has been decimated, operating revenues are dramatically reduced, rumors and confusion abound, and *everything* is a political priority. A period of chaos and frustration is inevitable as food and water are scarce, there is no electricity to oper-

1. James Jay Carafano and Matt A. Mayer, "FEMA and Federalism: Washington Is Moving in the Wrong Direction," Heritage Foundation *Background* No. 2032, May 8, 2007, at <http://www.heritage.org/Research/HomelandDefense/bg2032.cfm>; Matt A. Mayer, "States: Stop Subsidizing FEMA Waste and Manage Your Own Local Disasters," Heritage Foundation *Background* No. 2323, September 29, 2009, at <http://www.heritage.org/Research/HomelandSecurity/bg2323.cfm>.
2. Federal Emergency Management Agency, "Most Expensive Presidentially-Declared Disasters," June 4, 2009, at <http://www.fema.gov/hazard/hurricane/top10hu.shtm> (May 31, 2010).
3. Federal Emergency Management Agency, "Average Total Obligations by Year and by Declaration," June 22, 2009, at <http://www.fema.gov/government/grant/pa/stat2.shtm> (April 1, 2010).

ate air conditioners in 98 degree heat, fuel and pharmaceuticals are difficult or impossible to locate, and shelters are overcrowded and looting threatens to spiral out of control.

Eventually, order is restored, the local workforce begins to return, and state and federal support arrives. Next, the daunting task ahead begins to materialize and the really hard work starts: Community by community, damage assessments proceed and recovery strategies and priorities begin to take shape. Sooner, rather than later, the stark reality sets in that such a large-scale recovery program is heavily reliant on the federal government through the Public Assistance Grant Program as a primary source of funding.

The Public Assistance Grant Program

The nature of the federal Public Assistance Grant Program is such that each of these thousands of damaged facilities will require a detailed, itemized assessment to determine what was damaged by the storm and what is a reasonable cost to repair those damages and restore the facility's function. The contents of each damaged facility have to be assessed desk by desk, chair by chair, and lamp by lamp. Literally, millions upon millions of individual damage and cost decisions will be required to determine FEMA's level of participation in the funding of these projects.

With such a heavy reliance on federal funding, each of those millions of decisions is subject to scrutiny and challenge by the applicant—in the case of Hurricane Katrina, the state of Louisiana. There are generally not enough trained staff to accomplish the mission in a reasonable time frame. The process is excruciatingly slow and painful for the applicants, who are under a continuous barrage of demands from the public for the government to restore basic services. One of the federal coordinating officers working in the aftermath of Hurricane Katrina was quoted as saying that “using the Stafford Act in the wake of Hurricane Katrina is like bringing a donkey to the Kentucky Derby.”⁴ The Robert T. Stafford

Disaster Relief and Emergency Assistance Act is the authorizing statute that empowers FEMA to act when disasters strike.

It is evident to FEMA grant recipients that FEMA policy regarding Public Assistance Grants evolved within the context of non-catastrophic recovery experiences and should be re-evaluated in consideration of the newly identified challenges facing catastrophic recovery measures. It is also clear that FEMA policy has been influenced by various audits conducted by the Department of Homeland Security Office of Inspector General, which have taken a highly restrictive interpretation of the Stafford Act, FEMA regulation, and disaster-response policy.

Louisiana has presented FEMA with a number of requests for policy changes that allow more flexibility for a large-scale catastrophic recovery program. Louisiana submits that the changes requested were not precedent-setting or contrary to law or regulation, and would eliminate unnecessary delays in the recovery, as well as reduce the overall cost of the recovery.

Long-Term Recovery Challenges

Following are some of the challenges facing long-term recovery measures in the context of the FEMA Public Assistance Grant Program:

Challenge No. 1: FEMA Lacks the Resources to Efficiently Determine Proper Value of Grants. Ideally, the Project Worksheet, or PW, which is submitted by applicants to FEMA for approval of work projects, should reflect all of the repairs to a damaged facility that are eligible for funding from the Public Assistance Grant Program, those that are visible by cursory inspection as well as those that could be reasonably anticipated for damages that cannot be determined by visible inspection. Current FEMA policy, practice, and procedures provide that for most projects, visible damages are captured in the initial PW, and adjustments are made to the PW once the project is completed to cover any work and cost that was not detected during the initial writing of the grant.

4. Hearing Before the Committee on Homeland Security and Governmental Affairs, United States Senate, “Hurricane Katrina, Perspectives of FEMA's Operations Professionals,” December 8, 2005, at <http://ftp.resource.org/gpo.gov/hearings/109s/26744.pdf> (April 1, 2010).

Historically, it was not a priority for applicants to ensure a thorough analysis of the damages and repair costs before a grant is approved. In an ordinary event, most applicants can fund any interim funding shortfalls and settle up at “close-out,” the time when the grant is closed. For routine natural disasters, this practice has served the Public Assistance Grant program well.

For catastrophic events, however, when there may be hundreds of damaged facilities with as much as a billion dollars in damages, many applicants cannot meet the cash flow requirements of what could be hundreds of millions of dollars in funding shortages. Reconstruction projects, therefore, cannot begin until the community has identified the sources of the required funding.

In Louisiana, the initial versions of most of the large repair or replacement projects have generally been underestimated by at least a factor of two, and many by a factor as high as ten. The state of Louisiana recently surveyed the majority of its 1,200 applicants and identified more than 4,500 projects for which it believes the current PW version does not fully support the repair work necessary to restore the facilities. There are a number of reasons that so many of the PWs to support the Hurricane Katrina recovery are still deficient:

- FEMA’s historic practice of getting it close on the front end and resolving any shortfalls at close-out generally results in an incomplete scope of work;
- FEMA has insufficient experience and knowledgeable resources to comprehensively analyze the thousands of damaged facilities, some of which are highly technical and sophisticated, such as hospitals, power plants, detention facilities, pumping systems, and marine structures; and
- An early decision by FEMA to delay detailed damage assessments and write hundreds of PWs as “place holders” in the immediate wake of Hurricane Katrina to be later adjusted as time and resources permit.

FEMA employs a process referred to as Scope Alignment to analyze shortfalls in its initial damage estimates to correct deficient PWs. This process

involves comparing notes on each disputed project element and repair proposal until consensus is reached between applicants and FEMA. But this practice can take months or years to complete, is very expensive for all parties involved, and is often contentious and divisive. Some examples:

- A high school in St. Tammany Parish took nearly a year to reach agreement on the Project Worksheet and cost the parish an additional \$250,000 to prove that FEMA’s estimate was undervalued. The original PW was for the amount of \$23 million; the latest version is for \$45 million.
- The Recovery School District (RSD) in New Orleans sustained varying degrees of damages to its 117 school campuses, many completely destroyed. After more than two years working to align its projects, the RSD estimates that it has spent approximately \$10 million, and expects to spend another \$5 million to \$10 million over the next two years to complete all of its Scope Alignments. Louisiana is working with FEMA to find a more efficient solution to these funding discrepancies and delays, and Louisiana is pursuing a legislative solution that brings more state resources to bear on these issues.
- The high-profile project to repair Louisiana’s Charity Hospital started with a FEMA estimate of repairs around \$23 million. Three years later, FEMA increased the hospital funding to \$123 million, while stating that FEMA officials could not fully assess all of the building damages. The state of Louisiana hired three professional experts that have each reached the conclusion that the damages to the hospital warrant complete replacement of the building at a cost of around \$500 million. The state spent \$2.5 million and three years disputing FEMA’s low estimate. The case was recently resolved by the newly created Arbitration Board, which ruled in Louisiana’s favor.

Many Louisiana communities have grown weary of the PW process and the tedium, added costs, and delays of Scope Alignments. Out of desperation to rebuild their community, some applicants have resorted to proceeding with underfunded projects in hopes that somehow the PWs can be adjusted at

a later point, before the construction bills come due. Unfortunately, this practice often shifts the burden and risk of loss onto the construction industry to finance these projects until the adjusted PWs are completed, if ever. A series of recent meetings between the state of Louisiana and the Louisiana chapter of the Associated General Contractors has revealed their frustration over payment delays. Some members of the General Contractors suggested that in the future, the state can expect them to default on contracts, as well as abandonment of projects by contractors. Such a scenario is unfair for an industry seeking to do business in a hard economy, and it is inefficient for the state of Louisiana and the federal government.

Louisiana has advanced a number of proposals to speed up the funding process, some of which FEMA has adopted, some of which it has rejected, and some are still being considered. Louisiana will continue to work with FEMA to identify methods of efficiently processing PWs and minimizing the need for Scope Alignment.

Fundamentally, for FEMA to perform its recovery function well, it must be staffed properly and develop far more expertise in areas involved in PW work following a catastrophic natural disaster. It is clear that what has worked for routine natural disasters utterly comes up short for catastrophic events. It is also clear that FEMA's continued foray into routine natural disasters will prevent staff from gaining the type of expertise needed for truly catastrophic events.

Challenge No. 2: Applicants Lack Structural Resources, Too. Louisiana realized early in the recovery effort that few applicants, if any, had the human resources necessary to navigate the complexities of the Public Assistance Grant Program, or to organize, plan, and carry out a \$10 billion to \$12 billion capital improvement program on their own. Already cash-strapped because of dramatically reduced revenues and seemingly endless expenses ahead in the recovery, applicants were unable to recruit sufficient additional staff, or were reluctant to hire outside professional management firms.

In 2007, FEMA reluctantly agreed to a pilot project that, in theory, would provide the necessary

support for management services. Workable Standard Operating Procedures (SOP) for this support, however, took over two years to develop, and strict interpretation of those procedures continues to hamper that initiative. Nearly three years after approaching FEMA with the concept of providing an efficient grant vehicle to ensure adequate funding to applicants, the money is still not reaching those seeking the funding.

As a result, many contractors have either curtailed services or are threatening to stop providing services until funding is forthcoming. The current staff of the Louisiana Transitional Recovery Office (TRO) is working to overcome the inherent bureaucratic nature of the pilot project procedures and assist applicants in accessing these funds. Current FEMA policy allows consolidated project management for a group of small projects, but not for large projects. This distinction makes little sense: FEMA should expand this concept for catastrophic events and adopt it as formal policy.

Applicants also now have six separate funding "buckets" for each Public Assistance Grant. On the one hand, this segmentation is good because FEMA has finally recognized the full extent of all the work required to implement a restoration project. On the other hand, it is bad because FEMA has so complicated the process that applicants and state and local emergency management personnel are thoroughly confused and frustrated.

Most applicants are accustomed to applying to a single funding source for a project. Now, they must access six different funding buckets, including: architecture/engineering design fees; construction fees; project management fees (new to Katrina/Rita/Gustav/Ike); direct management fees (new to Katrina/Rita/Gustav/Ike); administrative fees; and insurance offset costs (new to Katrina/Rita/Gustav/Ike). Each funding bucket has a different set of rules, documentation requirements, tracking mechanisms, and special reimbursement requirements. To further complicate matters, the work elements associated with these six buckets are not clearly defined and it is difficult to determine how to classify a particular task to ensure that the funding is accessed properly.

Moreover, it is difficult for FEMA to write PWs because FEMA cannot distinguish the applicants' work efforts to compartmentalize the work into the correct PW bucket. This type of complexity increases administrative costs, delays submission and approval, and renders the process overly bureaucratic and inefficient.

Challenge No. 3: Federalizing Routine Natural Disasters Wastes Finite Resources. In October 2009, Louisiana requested a major disaster declaration for rainstorms in the northwest part of the state. This request was perfectly consistent with the current laws and regulations, as it was based on roughly \$13 million in eligible damages. President Barack Obama granted Louisiana a major disaster declaration that provided for "public assistance" under the Stafford Act.

The issuance of the major disaster declaration triggered the 75 percent/25 percent federal/non-federal cost-share arrangement. This means that Louisiana would receive roughly \$10 million from FEMA.

To deal with the October 2009 major disaster declaration, FEMA deployed and opened a Joint Field Office (JFO) in Shreveport, Louisiana. FEMA staffed the JFO with about 100 people who were mostly on travel status, which triggered additional pay and benefits. Louisiana deployed six staffers to the JFO, also on travel status.

The JFO staff expects to spend between 90 and 120 days identifying the damages and including them in the PWs. This initial work will be followed by intermittent management of grants by the JFO and ending grants when projects have been completed, over the next year or so. The annual salary for a Disaster Assistance Employee (DAE) on travel status at the JFO ranges from \$20,673 to \$76,995, depending on experience.⁵ When deployed, DAEs receive a *per diem* of \$143 in addition to their salaries to cover housing and food, plus \$45.75 for each travel day to and from the JFO.⁶ FEMA also covers

airfare to and from the JFO. The current budgeted cost for this deployment is nearly \$6 million.

As this example shows, the cost of administering the October 2009 major disaster declaration is very high relative to the value of the \$10 million in grants. Based on estimates, it appears that until a disaster reaches the \$20 million mark, the cost to administer a disaster under the current deployment standards cannot be justified as reasonable.

Congress Should Simplify FEMA's Work

It is clear that FEMA is over-tasked and under-resourced. In order to allow FEMA to focus its resources on catastrophic events and force states to increase funding for their own emergency management so they can better handle routine natural disasters, Congress should:

- **Establish clear requirements that limit the situations in which federal emergency declarations can be issued.** One way to accomplish this is to align declarations with the various scales used for disasters (e.g., the Saffir–Simpson Scale, the Richter Scale, and the Fujita Scale). Limiting disaster declarations to Category 1 hurricanes and above would eliminate all tropical storms that, while causing some damage, are not "of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."⁷ Another way to accomplish this is to raise the minimum dollar threshold for requesting disaster declarations. The current indicator that federal assistance might be warranted is when a state's storm-related damages reach \$1.29 per capita. For several states that is less than \$1 million in damages. That is hardly cause for deploying the full might of the federal government. Doubling the minimum *per capita* with a minimum damage threshold of \$5 million (and a maximum threshold of \$50 million) would significantly reduce the

5. Federal Emergency Management Agency, "FEMA–Disaster Assistance Employee" (undated Powerpoint slides).

6. U.S. General Services Administration, "Domestic Per Diem Rates," March 18, 2010, at http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=15586&channelId=-24653&oid=16365&contentId=17943&pageTypeId=17113&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT (April 1, 2010).

7. 42 U.S. Code § 5191(a).

number of events that would warrant a federal disaster declaration.

- **Entirely eliminate certain types of disasters from FEMA's portfolio.** Burdening FEMA with administering disaster relief after a freeze that destroys agriculture crops and does little else is highly inefficient. Similarly, droughts are tragic for those affected, but are generally limited to the agricultural community. Insurance markets and state and local governments can deal with these two types of disasters more efficiently than the federal government. Finally, severe storms and tornadoes tend to be localized events that, while causing property damage and even sometimes costing lives, rarely outstrip the abilities of state and local governments to provide recovery and repair relief.
- **Overhaul existing FEMA processes and procedures.** FEMA should increase staff and make sure that all PWs come with a complete statement of work and accurate cost estimates. FEMA should clearly define and simplify its six funding buckets.

These changes will reduce the number of required FEMA deployments, which currently dilute the agency's critical resources; lower the cost of responding to and recovering from minor events; improve service to its "customers"; and ultimately allow FEMA to become the world-class response and recovery administrative agency as it was originally intended.

Conclusion

Astounding as it may seem, Louisiana has only completed about one-quarter of the construction work to restore the public facilities damaged by

Hurricanes Katrina and Rita. There remains approximately \$4 billion in eligible work that has to be captured in PWs to allow the remaining construction to continue. Few of the repairs to restore facilities damaged by Hurricanes Gustav and Ike have even begun.

Louisiana still has a long way to go in its recovery efforts—and if it keeps using the same restrictive policies that it has over the past four years, the state can expect the same slow results in the future. The simple reality is that the response and recovery to a truly catastrophic natural disaster, leaving hundreds of thousands homeless, cannot be handled the same way as a three-county flood.

Yet FEMA spends most of its time and resources on those three-county floods, tornadoes, fires, and snowstorms. Appropriate changes must be made to reduce the number of routine natural disasters to which FEMA must respond, and Public Assistance Grant policy should be revisited, focusing on catastrophic events, simplicity, and maximum flexibility for those managing the disaster on the ground.

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