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Abstract

During the past fifty years, federal disaster policy in the United States has been shaped by an ongoing conflict between proponents who favor federal intervention following a disaster and those who believe disaster response should be the responsibility of state and local governments and charity. This article explores the existing federal disaster policy landscape within the United States with a focus on the Stafford Act, the cultural and political forces that produced it, and how the current system is ill equipped to aid in the response and recovery from major catastrophes. The Stafford Act defines how federal disasters are declared, determines the types of assistance to be provided by the federal government, and establishes cost sharing arrangements among federal, state, and local governments. The Federal Emergency Management Agency (FEMA) carries out the provisions of the Stafford Act and distributes much of the assistance provided by the Act. With the establishment of the U.S. Department of Homeland Security, the threat of domestic terrorism, and large-scale natural disasters like Hurricane Katrina, the limits of the Stafford Act and FEMA have been shown. We look at several areas where the shortcomings of the Stafford Act have emerged and propose directions for reform.

KEYWORDS: Stafford Act, disaster, terrorism, Katrina, homeland security, DHS

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INTRODUCTION

Federal disaster policy in the United States has been shaped by an ongoing conflict between those who favor federal intervention following a disaster and those who believe disaster response should be the responsibility of state and local governments and charity. The net result is a complex system of regulations and government agencies responsible for disaster management created by cobbling together previously existing federal agencies with their own cultures, policies, objectives, and constituencies.

Multiple layers of law and regulations – the Stafford Act, the Homeland Security Act of 2002, the Post Katrina Emergency Management Reform Act of 2006, and the National Response Framework– mean a disaster can simultaneously be declared a Major Disaster, a Catastrophic Incident, and an Incident of National Significance – and be responded to in accordance with the provisions of all of those laws, resulting in confusion as to which set of regulations apply during a crises.

Just as problematic, provisions within the current federal laws are designed with smaller scale disasters in mind – such as floods, tornadoes, and winter storms. No distinction is made between a blizzard that strikes Buffalo¹ and a hurricane the magnitude of Katrina². Federal regulations and policies designed to meet the needs of smaller-scale disasters become roadblocks that hamper both the initial response and long term recovery when they are deployed to deal with a catastrophe such as Hurricane Katrina or the September 11 attacks.

This article explores the existing disaster policy landscape within the United States with a focus on the Stafford Act, the cultural and political forces that produced it, and how the current system is ill equipped to aid in the response and recovery from major catastrophes. The public debate stemming from the failures triggered by Hurricane Katrina and the slow rebuilding along much of the Gulf Coast will be better informed by an understanding of these factors.

THE STAFFORD ACT

Enacted in 1988 and last significantly amended in 2000, The Robert T. Stafford Disaster Relief and Emergency Assistance Act³ (the Stafford Act) is the centerpiece of federal disaster policy. It defines how federal disasters are declared, determines the types of assistance to be provided by the federal government, and establishes cost sharing arrangements among federal, state, and

¹ The October 2006 Blizzard in Buffalo, NY, was declared a major disaster by President Bush. For more information, see <http://www.fema.gov/news/event.fema?id=7225>

² Hurricane Katrina was declared a major disaster by President Bush. For more information, see <http://www.fema.gov/news/newsrelease.fema?id=18478>

local governments. The Federal Emergency Management Agency (FEMA) carries out the provisions of the Stafford Act and distributes much of the assistance provided by the Act.

In the 1980s, as the costs of federal disaster relief efforts began to escalate, Congress questioned the President's use of disaster declarations for non-natural disasters –primarily in response to President Carter's use of the Disaster Relief Act to help manage the Cuban refugee influx into Florida and the Three Mile Island accident, among other incidents⁴. To address these concerns, Congress passed the Stafford Act³.

The Stafford Act limits the declaration of a major disaster to “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 explosion⁶.” Under this definition, the Cuban refugee crisis and Three Mile Island would not have qualified as a major disaster. In addition to defining the terms under which the President may authorize the use of federal funds to assist states and localities in need, the Stafford Act:

- Established a 75-percent federal / 25-percent state and local cost sharing plan;
- Provided public assistance for emergency work, repair and restoration, and debris removal; and
- Emphasized mitigation, including the establishment of mitigation grants⁷.

The Stafford Act establishes two incident levels –emergencies and major disasters. Emergencies are defined as “Any occasion or incident for which, in the determination of the President, federal assistance is needed to supplement State and local efforts⁸.” This can include disseminating warnings and providing technical and advisory assistance to state and local governments, removing debris, and assisting in the distribution of medicine, food, and other supplies⁹. Total

³ 42 U.S.C. 5121 et. seq.

⁴ Federal Emergency Management Agency (FEMA), *FEMA Independent Study Course 292: Disaster Basics*, op cit. 2-7.

⁵ 42 U.S.C. § 4121 et seq. (available online at <http://www.fema.gov/library/stafact.shtm>)

⁶ 42 U.S.C. § 5122 (2) (available online at <http://www.fema.gov/library/stafact.shtm>)

⁷ Mitigation grants are federal disaster grants aimed at lessening the impact that disasters have on both people and property. FEMA currently has three mitigation grant programs: the Hazards Mitigation Grant Program (HGMP), the Pre-Disaster Mitigation program (PDM), and the Flood Mitigation Assistance (FMA) program.

⁸ 42 U.S.C. 5122

⁹ 42 U.S.C. 5192

federal assistance for any emergency may not exceed \$5 million, except where the President determines further assistance is required¹⁰.

Alternately, the president may declare a major disaster if there is “damage of sufficient severity and magnitude to warrant major disaster assistance.”¹¹ Such a declaration brings to bear the full resources and authority of the federal government – as authorized under the Stafford Act – including utilizing the resources of the U.S. Department of Defense, providing search and rescue teams, and providing emergency medical care, shelter, and temporary facilities¹².

Upon the declaration of an emergency or major disaster, up to \$28,800¹³ in assistance can be provided to eligible households in the impacted area. This assistance is subdivided with caps for how much can be used for repairs, temporary housing, and other items. A major disaster declaration also allows the federal government to provide long-term recovery assistance, including up to \$1.5 million in Economic Injury Disaster Loans (EIDL) to small businesses, loans of up to \$5 million to local governments to supplement lost tax revenue, and financial assistance to non-profit utility companies. Following a major disaster, the federal government will pay up to 75% of the cost of repairing or replacing state and local facilities and infrastructure damaged or destroyed by the disaster¹⁴.

The net result is that over the past 30 years, FEMA distributes, on average, \$2 billion in Stafford Act related disaster assistance per year¹⁵. This funding comes from a Disaster Relief Fund established by Congress and funded each year based on projected needs. Following large catastrophes, however, Congress may pass emergency appropriations to provide additional assistance and establish temporary programs that go beyond the scope of the Stafford Act. Following the 1994 Northridge (Los Angeles) Earthquake, Congress appropriated \$11 billion¹⁶. \$40 billion was appropriated following the September 11 attacks¹⁷, and \$110 billion after Hurricanes Katrina and Rita¹⁸.

¹⁰ 42 U.S.C. 5193

¹¹ 42 U.S.C. 5122

¹² 42 U.S.C. 5170 et seq.

¹³ The law stipulates \$25,000, as adjusted for inflation based on the Consumer Price Index. In 2007 dollars this is \$28,800.

¹⁴ 42 U.S.C. 5170 et seq.

¹⁵ Bea, Keith. Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding. *Congressional Research Service*. Page 8. August 29, 2005. Online at www.fas.org/sfp/crs/homesecc/RL33053.pdf

¹⁶ Emergency Supplemental Appropriations Bill – HR 3759, PL 103-211

¹⁷ Emergency Supplemental Appropriations Bill – HR 2888, PL 107-38

¹⁸ Emergency Supplemental Appropriations Bills – HR 4939, PL 109-234 and HR 3673, PL 109-62

FEMA

The Federal Emergency Management Agency (FEMA) is the federal agency responsible for coordinating and disseminating relief under the Stafford Act. Prior to the creation of the Department of Homeland Security, FEMA was an independent agency that reported directly to the President. However, the Homeland Security Act of 2002¹⁹ -which established the Department of Homeland Security and provides the legal framework for the organization and activities of the department -moved FEMA into the Department of Homeland Security. Under this new arrangement, FEMA continues to coordinate federal disaster response, but it has lost its independent decision making capabilities. FEMA must report to the Secretary of the Department of Homeland Security and make decisions within the larger framework of the Department.

Under James Lee Witt, President Clinton's FEMA director, the agency emerged as a global model for a federal disaster response agency. Witt brought in professional staff and received wide praise for FEMA's response to disasters such as the 1993 Midwest floods, the Northridge Earthquake, and the Oklahoma City bombing²⁰. President George W. Bush, during a 2000 Presidential Debate, even remarked, "James Lee Witt of FEMA has done a really good job of working with governors during times of crisis²¹."

Following the 1993 Mississippi River floods, FEMA bought homes and businesses near the river and relocated the occupants to higher ground. According to the *Los Angeles Times*, the result for one Illinois town was "That although more than 400 people applied for disaster aid after the (1993) flood, only 11 needed to apply two years later when the river again jumped its banks²²."

Under James Lee Witt, FEMA also loosened its regulations and "gave more aid more quickly,²³" which contributed to a quicker and more effective response, but also renewed concerns that too much was being spent on disaster assistance.

During the late 1990s, Congress sought out additional approaches to control the cost of federal disaster assistance. In 1998, the United States

¹⁹ Pub. L. No. 107-296

²⁰ Wayne, Leslie and Justice, Glen. "FEMA Leader Under Clinton Makes It Pay." *New York Times*. October 10, 2005. Section A; Column 3, Page 1.

²¹ Adair, Bill. "Lessons his father didn't share." *St Petersburg Times*. September 8, 2005. Page 6A.

²² Gosselin, Peter and Miller, Alan. "Why FEMA Was Missing in Action." *Los Angeles Times*. September 5, 2005. Online. http://www.latimes.com/news/nationworld/nation/la-na-fema5sep05.1.2869010.full_story?coll=la-headlines-nation

²³ Roberts, Patrick. "FEMA After Katrina." *Hoover Institution Policy Review #137*. Online. <http://www.policyreview.org/137/roberts.html>. Accessed February 14, 2007.

Government Accountability Office (GAO) issued a report²⁴ outlining specific approaches to reduce these costs, including the dedication of more resources to disaster mitigation. The Disaster Mitigation Act of 2000 modified the Stafford Act by establishing a national program for pre-disaster mitigation and provided additional mitigation funding to states that develop “Enhanced Mitigation Plans²⁵.” Today, disaster relief in the United States is administered through FEMA according to the guidelines set forth in the Stafford Act and as amended by the Disaster Mitigation Act of 2000²⁶.

Although federal disaster relief policy has been subject to many changes since the passage of the Disaster Relief Act of 1950, nothing transformed the legislative landscape as much as the terrorist attacks of September 11th, 2001. The attacks thrust homeland security and counter terrorism into the forefront of the national political agenda and shifted disaster response from natural disasters back to a renewed form of civil defense.

DHS

In June 2002, the U.S. Department of Homeland Security (DHS) was created to realign “the current confusing patchwork of government activities into a single department whose primary mission is to protect our homeland²⁷.” The creation of the U.S. Department of Homeland Security represented the most significant transformation of the federal government in more than half a century. FEMA was one of the many agencies folded into the new department.

The creation of DHS offered an opportunity to conduct a comprehensive review and revision of disaster policy and establish a dual system that serves the needs of both natural disaster response and counter terrorism. However, the laws and policies of FEMA were simply moved into the larger Department. A new level of law and management in the form of the Homeland Security Act of 2002, the National Response Framework, and the U.S. Department of Homeland Security, was blended on top of FEMA and the Stafford Act.

²⁴ United States General Accounting Office, *Disaster Assistance: Information on Federal Costs and Approaches for Reducing Them*, Statement of Judy A. England-Joseph, Director, Housing and Community Development Issues, Resources, Community and Economic Development Division, March 1998 (available online at <http://www.gao.gov/archive/1998/rc98139t.pdf>)

²⁵ “FEMA: The Disaster Mitigation Act of 2000.” FEMA. Online.
<http://www.fema.gov/plan/mitplanning/DMA.shtm> Accessed February 14, 2007

²⁶ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 51221, et seq., as amended by the Disaster Mitigation Act of 2000, Pub L. No 106-390, 114 Stat. 1552 (2000) (the Stafford Act).

²⁷ “The Department of Homeland Security,” President George W. Bush, June 2002, p. 1 (available online at <http://www.dhs.gov/interweb/assetlibrary/book.pdf>)

Prior to the September 11 attacks, the Bush Administration singled its desire to limit the scope of the federal government in the area of natural disaster response. Joe Allbaugh, President George W. Bush's first FEMA director, summed up this desire in his May 2001 testimony before a Senate Appropriations subcommittee.

“The original intent of Federal disaster assistance is to supplement State and local response efforts. Many are concerned that Federal disaster assistance may have evolved into both an oversized entitlement program and a disincentive to effective State and local risk management. Expectations of when the Federal Government should be involved and the degree of involvement may have ballooned beyond what is an appropriate level. We must restore the predominant role of State and local response to most disasters. Federal assistance needs to supplement, not supplant, State and local efforts²⁸.”

The creation of the U.S. Department of Homeland Security accelerated efforts to reduce the size and scope of federal natural disaster response programs. After FEMA was folded into the DHS, three out of every four grant dollars provided by FEMA for local preparedness and first-responders went to terrorism related measures²⁹ - in other words, \$2 billion in grants to prevent terrorist attacks, but initially, only \$180 million for natural disasters³⁰. Additionally, by simply being moved into the Department of Homeland Security, FEMA –which had been an independent cabinet level agency –suddenly became a small agency of approximately 2,500 employees competing for resources within a mammoth department of over 180,000 employees. The federal government's natural disaster programs became lost among a 21st century resurgence of civil defense.

In a 2003 report, the Government Accountability Office (GAO) warned that FEMA's placement within the Department of Homeland Security had the potential to reduce FEMA's focus on natural disasters and recommended that FEMA take steps to ensure this did not occur:

²⁸ FEMA. “Testimony of Federal Emergency Management Agency Director Joe M. Allbaugh.” FEMA. Online. <http://www.fema.gov/about/director/allbaugh/testimony/051601.shtm> Accessed November 8, 2007.

²⁹ Gosselin, Peter and Miller, Alan. “Why FEMA Was Missing in Action.” Los Angeles Times. September 5, 2005. Online. <http://www.latimes.com/news/nationworld/nation/la-na-fema5sep05.1.2869010.full.story?coll=la-headlines-nation>

³⁰ Manjoo, Farhad. “Why FEMA failed.” Salon.com. September 7, 2005. Online. <http://dir.salon.com/story/news/feature/2005/09/07/fema/index.html> Accessed September 25, 2007.

“Moreover, the placement of FEMA within DHS represents a substantially changed environment in which FEMA will conduct its missions in the future, and missions that focus on reducing the impacts of natural hazards, such as hazard mitigation and flood insurance may receive decreased emphasis. Sustained attention to these programs will be needed to ensure they maintain or improve their effectiveness in protecting the nation against, and reducing federal costs associated with, natural disaster³¹.”

Submitted almost two years before the devastation of Hurricane Katrina, the GAO report provided a word of warning about shortcomings within FEMA that have since been echoed in reports following Hurricane Katrina issued by the White House³², the U.S. House of Representatives³³, and the U.S. Senate³⁴.

HURRICANE KATRINA

Hurricane Katrina revealed that despite advances in technology and communication, and despite the creation of the Department of Homeland Security, the country remains ill prepared to respond to and recover from a major catastrophe. Systemic problems of management, resource allocation, and leadership within FEMA were also brought to light, which Congress has attempted to correct with the Post Katrina Emergency Management Reform Act of 2006.

Signed by President Bush on October 4, 2006, the Post Katrina Act works to correct the most glowing errors of FEMA’s management following Hurricane Katrina and looks to build professional management and staff within FEMA. For example, the Post Katrina Act requires the head of FEMA to be a professional disaster manager who possesses a “demonstrated ability in and knowledge of emergency management and homeland security; and not less than 5 years of

³¹ United States Government Accountability Office, “Disaster Assistance: Federal Aid to the New York City Area Following the Attacks of September 11th and Challenges Confronting FEMA,” Statement of JayEtta Z. Heckler, Director, Physical Infrastructure Issues, September 24, 2003, p. 27-28 (available online at <http://www.gao.gov/new.items/d031174t.pdf>)

³² The White House. *The Federal Response to Hurricane Katrina: Lessons Learned*, A Report Submitted to President George W. Bush by Frances Townsend, Assistant to the President for Homeland Security and Counterterrorism, February 23, 2006, (available online at <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf>)

³³ US House of Representatives. *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, February 15, 2006, (available online at http://katrina.house.gov/full_katrina_report.htm)

³⁴ US Senate. *Hurricane Katrina: A Nation Still Unprepared*. 2006. (available online at <http://hsgac.senate.gov/index.cfm?Fuseaction=Links.Katrina>)

executive leadership and management experience in the public or private sector³⁵.” Previously, there had been no such requirement, and often the head of FEMA was a political appointee who had little or no previous disaster experience. To further improve professionalism within the agency, the Post Katrina Act also requires FEMA to develop a human capital plan and career paths for its employees, authorizes recruitment and retention bonuses, and offers educational programs for senior staff³⁶.

To improve response, the Post Katrina Act establishes a new level for “Catastrophic Incidents³⁷,” defined as:

“Any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area³⁸.”

This new level of catastrophic incidents is designed to improve the immediate federal response following a catastrophe and provides “Regional Strike Teams³⁹” and a “Surge Capacity Force⁴⁰” to ensure that FEMA arrives as soon as possible and is backed up by enough staff to provide an effective response.

Changes were also made to the Stafford Act to develop a national disaster housing strategy⁴¹, provide more money for pre-disaster mitigation⁴², create programs to facilitate family reunions,⁴³ and the location of displaced children⁴⁴. However, the catastrophic incident provisions of the 2006 Post Katrina Act were not included in the Stafford Act – they are included in sections of law that deal with national emergency management –thus effectively adding a new layer of regulation and meaning that a disaster can now simultaneously be declared a “Major Disaster” under the Stafford Act, an “Incident of National Significance” under the National Response Framework, and a “Catastrophic Incident” under the Post Katrina Act.

³⁵ PL 109-295, section 503(c)

³⁶ PL 109-295, subtitle B

³⁷ PL 109-295, sec. 602

³⁸ Public Law 109-295, sec. 602

³⁹ Public Law 109-295, subtitle 507(f)

⁴⁰ Public Law 109-295, section 624

⁴¹ PL 109-295, section 683

⁴² PL 109-295, section 684

⁴³ PL 109-295, section 689c

⁴⁴ PL 109-295, section 689b

SHORTCOMINGS

While the designation of a “catastrophe” under the Post Katrina Act brings additional resources to bear in the days following a catastrophe, it does not change the underlying concepts upon which federal disaster policy is built, nor does it guide long-term recovery.

Current federal disaster policy is designed with smaller scale disasters in mind – such as floods, tornadoes, and winter storms. No distinction is made between a blizzard that strikes Buffalo⁴⁵ and a hurricane the magnitude of Katrina⁴⁶ – both can be declared a “major disaster” under the Stafford Act.

Well intended federal regulations and policies designed to meet the needs of smaller-scale disasters become roadblocks that hamper both initial response and long term recovery when they are deployed to deal with a catastrophe such as Hurricane Katrina or the September 11 attacks. As Gil Jamieson, FEMA’s deputy administrator for Gulf Coast recovery explained, “There was a tendency in the early days to think we could run this as we might run a garden-variety disaster, but you just can’t push that big of a pig through the pipe⁴⁷.”

Two years after Hurricane Katrina, 43,000 families in Louisiana still live in temporary trailers⁴⁸. Crime has skyrocketed in New Orleans, but the police superintendent continues to work out of a trailer, and the city’s DNA lab has not been rebuilt⁴⁹. Fewer than half of the public schools have reopened⁵⁰. Only 20% of the levees are as high as they should be⁵¹.

The definition of a “catastrophic incident” from the Post Katrina Act should be added to the Stafford Act to bring coordination between the two laws. Several changes, outlined below, should also be made to the Stafford Act to ensure its provisions do not again hamper response and recovery efforts.

⁴⁵ The October 2006 Blizzard in Buffalo, NY, was declared a major disaster by President Bush. For more information, see <http://www.fema.gov/news/event.fema?id=7225>

⁴⁶ Hurricane Katrina was declared a major disaster by President Bush. For more information, see <http://www.fema.gov/news/newsrelease.fema?id=18478>

⁴⁷ Jervis, Rick. “2 years after Katrina, pace of rebuilding depends on who pays.” *USA Today*. August 29, 2007. Online. http://www.usatoday.com/news/nation/2007-08-28-rebuild_N.htm Accessed September 27, 2007.

⁴⁸ Reid, Tim. “Two years on, New Orleans and Bush still damaged by Katrina.” *The Times of London*. August 30, 2007. Page 33.

⁴⁹ Jervis, Rick. “2 years after Katrina, pace of rebuilding depends on who pays.” *USA Today*. August 29, 2007. Online. http://www.usatoday.com/news/nation/2007-08-28-rebuild_N.htm Accessed September 27, 2007.

⁵⁰ Luce, Edward. “Bush taken to task on empty promises to New Orleans.” *Financial Times*. August 29, 2007. Page 7

⁵¹ McNutly, Sheila. “Disaster leaves behind a tale of two cities.” *Financial Times*. August 29, 2007. Page 7

LOCAL GOVERNMENT FINANCES

After Hurricane Katrina, the City of New Orleans was forced to lay off nearly half its workforce because there was not enough cash on hand to meet payroll obligations⁵². The Stafford Act authorizes federal disaster assistance to cover the overtime of local government workers for work related to responding to the disaster, but not regular salaries.

The Act also authorizes loans of up to \$5 million to cover forgone tax revenues lost in the wake of disasters, but when faced with the loss of a significant proportion of the local tax base following a catastrophe, state and local governments do not have an adequate means to quickly recover forgone revenue and continue government services without supplemental appropriations from Congress. After the September 11 attacks, New York City lost approximately \$2.5 to \$2.9 billion in tax revenue for FY 2002 and 2003⁵³. According to a Congressional Research Service report, almost three-quarters of Louisiana state personal income and retail sales (72.8 percent and 72.2 percent, respectively) were generated in the declared disaster parishes, with 24.3 percent of personal income and 22.3 percent of all retail sales generated in the New Orleans metropolitan statistical area (MSA)⁵⁴.

The Stafford Act should be amended to abolish the \$5 million cap on loans to reimburse for lost tax revenue. In addition, sections of the Stafford Act that allow the federal government to fund overtime pay of public employees should be amended to allow the federal government to, in part or in full, pay the salaries of state and local public employees in areas stricken by a catastrophe for a limited amount of time. This will ensure that areas affected by a catastrophe do not face the dual challenge of overwhelming devastation and a bankrupt local government forced to layoff workers.

INSURANCE

An underlying assumption of federal policy is that assistance to business and individuals should first come from insurance. The Stafford Act states, “The President... shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has

⁵² CNN. “New Orleans to lay off 3,000 workers – Oct 4, 2005.” [CNN.com](http://www.cnn.com/2005/US/10/04/new.orleans/index.html) Online. <http://www.cnn.com/2005/US/10/04/new.orleans/index.html> Accessed April 2, 2007

⁵³ United States Government Accounting Office, “September 11: Recent Estimates of Fiscal Impact of 2001 Terrorist Attack on New York,” March 2005 (available online at <http://www.gao.gov/new.items/d05269.pdf>)

⁵⁴ Maguire, Steven, *The Impact of Hurricane Katrina on the State Budgets of Alabama, Louisiana, and Mississippi*, Congressional Research Service, November 15, 2005, p. 2-3.

received financial assistance under any other program or from insurance or any other source⁵⁵.”

It is essential for businesses and individuals to have insurance, and for the government to encourage insurance coverage in order to minimize the amount of taxpayer money spent following a disaster. The problem is that, following a catastrophe, important documents needed by businesses and individuals to document ownership and proof of insurance may have been lost, making it difficult for people to apply and receive government assistance in a timely fashion. As Don Wilson, president of the national Association of Small Business Development Centers explained following Katrina, “Even if your CPA has copies of your records, their records may have been destroyed⁵⁶.”

Even more troubling, insurance companies have moved to minimize losses, leaving victims in difficult financial positions. In a bid to avoid payouts to those who had hurricane – but not flood – coverage following Katrina, insurance companies argued that the damage in New Orleans was caused by flooding, not the hurricane, and that the devastation along the Gulf Coast was caused by surge flooding, not hurricane winds^{57 58 59}. In February 2007, State Farm was found by a federal judge in Mississippi to have acted in a “grossly negligent way⁶⁰” after denying a homeowner’s claim following the hurricane⁶¹. Numerous other Katrina related lawsuits against insurance companies are making their way through the courts, and in time judgments will be levied and settlements reached, resulting in payouts – but this may not come until years after the hurricane.

Even when insurance companies act to make payments, the devastation that follows a catastrophe can overwhelm the company and result in multi-month

⁵⁵ 42 U.S.C. 5155

⁵⁶ Abrams, Rhonda. “Helping small businesses in wake of Katrina.” *USA Today*. September 1, 2005. Online. http://www.usatoday.com/money/smallbusiness/columnist/abrams/2005-09-01-small-business-katrina_x.htm

⁵⁷ CNN. “Katrina, time take their toll on Mississippi town – Feb 20, 2006.” *CNN.com* Online. <http://www.cnn.com/2006/US/02/17/koch.katrina/index.html> Accessed April 2, 2007.

⁵⁸ USA Today. “Crazy-quilt insurance system delays Katrina recovery.” *USA Today*. Online. http://blogs.usatoday.com/oped/2007/01/photo_limbo_mis.html Accessed April 2, 2007.

⁵⁹ Treaster, Joseph. “Judge Is Urged to Back Deal on Hurricane Damage Claims.” *The New York Times*. March 1, 2007 Online.

http://www.nytimes.com/2007/03/01/business/01insure.html?_r=1&oref=slogin Accessed March 1, 2007

⁶⁰ Kunzelman, Michael. “La. Katrina Insurance Suit Begins.” *International Business Times*. February 12, 2007. Online. <http://www.ibtimes.com/articles/20070212/add20-katrina-insurance.htm> Accessed March 1, 2007

⁶¹ Kunzelman, Michael. “Judge reduces jury’s \$2.5 million award in Katrina insurance case.” *North Country Times*. February 1, 2007. Online.

http://www.nctimes.com/articles/2007/02/01/news/nation/16_38_341_31_07.txt Accessed March 1, 2007

delays for insurance payments. Nearly 9 months after the hurricane hit, the insurance modeling firm ISO estimated that Louisiana had \$24.3 billion in insured losses, but records from the Louisiana Department of Insurance showed that only half that amount - \$12.5 billion – had been paid out by April 2006⁶². A year after Katrina, thousands in Mississippi were also still waiting for insurance payments⁶³.

Government policy must continue to encourage insurance coverage so that insurance companies, not taxpayers, absorb the majority of the bill following a catastrophe. However, the Stafford Act and its regulations should be modified to allow cash assistance – which is capped at \$28,800 per household, and further subdivided with caps on repairs, temporary housing assistance, and other items – to flow to qualified homeowners and renters following a catastrophe without having to provide proof of insurance coverage. This will provide devastated families with immediate assistance in order to begin the recovery process. This assistance could later be reimbursed to the government when insurance coverage is received, or through income taxes.

UTILITIES

Following a catastrophe, the resumption of utilities – electricity, water, sewer, and telecommunications – is critical. Lives can be saved and suffering minimized with functioning utilities. According to the Federal Communications Commission, Hurricane Katrina destroyed more than 3 million customer phone lines, and more than a thousand cell phone sites⁶⁴. Private telecommunications firms were among the first to repair destroyed communications lines, patching their way into New Orleans in the wake of Hurricane Katrina well ahead of the federal government. However, utility workers are not treated as emergency responders. As recounted in news reports, “BellSouth found a soggy, unhappy crowd of people outside its main downtown New Orleans switching facility soon after Katrina blew over. Company executives said they feared the crowd would

⁶² Callimachi, Rukmini. “Insurance limbo delays rebuilding of Gulf Coast.” The Seattle Times. June 12, 2006. Online.

http://seattletimes.nwsourc.com/html/nationworld/2003055671_rebuild12.html Accessed March 1, 2007.

⁶³ Chu, Kathy and Copeland, Larry. “Homeowners decked by Katrina still wait for insurers to pay up.” USA Today. August 24, 2006. Online.

http://www.usatoday.com/money/perfi/insurance/2006-08-24-katrina-insure-usat_x.htm Accessed March 1, 2007

⁶⁴ United States Government Accountability Office, “Hurricane Katrina: Providing Oversight of the Nation’s Preparedness, Response, and Recovery Activities,” Statement of Norman J. Rabkin, Managing Director, Homeland Security and Justice Issues, September 28, 2005 (available online at <http://www.gao.gov/new.items/d051053t.pdf>)

try to forcibly enter the building to seize the food and water supplies inside – which could have disrupted the fragile telecommunications network even more⁶⁵.”

Fearing for their safety, and with gun shots being fired, BellSouth was forced to evacuate the building, shutting down phone lines in New Orleans that were still functional. BellSouth had requested security escorts and “priority” access to food, fuel, water and shelter from the federal government, but were deigned because the Stafford Act does not recognize utility workers as “emergency responders⁶⁶.”

The Stafford Act should be amended so that, following a catastrophe, utility workers are recognized as “emergency responders,” thus enabling them to receive security escorts and priority access to food, fuel, water, and shelter⁶⁷.

DISTRIBUTION OF FUNDS

To make up for limitations within the Stafford Act, Congress historically has appropriated billions of dollars and established special programs that provide additional assistance following a catastrophe. After the 1994 Northridge (Los Angeles) Earthquake, Congress appropriated \$11 billion⁶⁸. \$40 billion was appropriated following the September 11 attacks⁶⁹, and \$110 billion after Hurricanes Katrina and Rita⁷⁰.

The distribution of this funding, along with Stafford Act assistance, is governed by an elaborate set of procedures. The result is that it takes months, if not years, for the responsible federal agencies to process and distribute the assistance. For example, nearly a year and half after Katrina, of the \$42 billion given to FEMA, \$25 billion has been distributed. The Army Corps of Engineers had spent \$1.3 billion out of \$5.8 billion for levee repairs, and the Department of Housing and Urban Development had distributed \$1.7 billion out of \$17 billion received⁷¹.

⁶⁵ Broache, Anne. “Telecoms call for legal fixes after Katrina.” Tech News on ZDNet. June 1, 2006. Online. <http://news.zdnet.com/2100-1035-6078811.html> Accessed March 1, 2007

⁶⁶ Broache, Anne. “Telecoms call for legal fixes after Katrina.” Tech News on ZDNet. June 1, 2006. Online. <http://news.zdnet.com/2100-1035-6078811.html> Accessed March 1, 2007

⁶⁷ This sentiment was echoed in a report issued by the President’s National Security Telecommunications Advisory Committee in January 2006. The report can be found online at www.ncs.gov/nstac/reports/2006/NSTAC%20LRTF%20Stafford%20Act%20Report_Final.pdf

⁶⁸ Emergency Supplemental Appropriations Bill – HR 3759, PL 103-211

⁶⁹ Emergency Supplemental Appropriations Bill – HR 2888, PL 107-38

⁷⁰ Emergency Supplemental Appropriations Bills – HR 4939, PL 109-234 and HR 3673, PL 109-62

⁷¹ Cooper, Christopher. “In Katrina’s wake: Where is the money?” The Wall Street Journal. January 29, 2007.

With the bulk of immediate rescue and recovery work, along with long-term planning and rebuilding resting in the hands of state and local governments, a system that provides federal assistance to state and local governments as quickly as possible is paramount.

Often delays are not caused by provisions of the law, but exist within regulations and interpretations. During the 1990s, FEMA successfully responded to catastrophes and major disasters like the 1993 Midwest floods and the 1994 Oklahoma City bombing by relaxing the regulations that implement the Stafford Act⁷². A similar result could occur if FEMA designed its Public Assistance Program in a fashion such that one damage survey and estimate was written for each affected community or state. This would allow FEMA to quickly provide assistance to state and local governments in a form similar to a block grant. Where possible, money appropriated by Congress following a catastrophe should also be provided directly to state and local governments in the form of block grants. This will eliminate the burden and associated time delays placed on federal agencies as they distribute the assistance, and it will give state and local governments flexibility in using the money as they see fit.

A general rider within the Stafford Act for catastrophic events, giving the President, in consultation with Congress, the authority to waive Stafford Act provisions and regulations following a catastrophe represents another effective means of providing regulatory flexibility following a catastrophe. To prevent an open ended mandate, the rider could also require the President, after an initial damage assessment, and in coordination with Congress, to set a cap on the amount of immediate and long term recovery assistance that will be provided for the catastrophe.

21ST CENTURY THREATS

Looking to the future, Congress specifically exempted chemical, biological, and nuclear attacks and accidents from the Stafford Act in response to President Carter's use of disaster regulations to respond to the Three Mile Island accident⁷³. However, with the possibility of a terrorist attack involving a chemical, biological, or nuclear agent, the Stafford Act should be amended to include these types of disasters.

The President possesses power under other laws, including the National Emergencies Act,⁷⁴ and the Comprehensive Environmental Response,

⁷² Roberts, Patrick. "FEMA After Katrina." *Hoover Institution Policy Review #137*. Online. <http://www.policyreview.org/137/roberts.html>. Accessed February 14, 2007.

⁷³ Federal Emergency Management Agency (FEMA), *FEMA Independent Study Course 292: Disaster Basics*, op cit. 2-7.

⁷⁴ 50 U.S.C. 1601 et seq.

Compensation, and Liability Act of 1980⁷⁵ to respond to major disturbances of the public order, environmental disasters, and incidents that result in the release of hazardous substances⁷⁶. Title V of the Homeland Security Act of 2002 also gives Department of Homeland Security the power to act in the event of a nuclear or public health incident⁷⁷.

Beyond causing a large number of casualties, a chemical, biological, radiological, or nuclear attack or accident has the potential to devastate local economies, wreck havoc on infrastructure, and generate the need for temporary housing. Recovering from such attacks or accidents could require extensive, long-term investment, which the major disaster assistance programs of the Stafford Act are designed to facilitate – but do not cover because a major disaster is defined to exclude these types of events.

If needed, the President may declare an emergency under the Stafford Act, but this limits federal assistance to \$5 million, unless expanded by the President⁷⁸. The definition of a major disaster should be amended to allow the full range of Stafford Act options to come into play during a chemical, biological, radiological, or nuclear attack or accident. If the incident is of sufficient magnitude to qualify as a catastrophe, the catastrophic assistance provisions recommended by this paper could also come into effect.

CONCLUSION

Throughout the history of American disaster policy, existing federal government agencies with their own policies, objectives, and constituencies have been cobbled together to create new agencies, and layers of law have been added on top existing regulations without amending previous laws or revisiting the assumptions upon which they rest. This has produced a system where disasters are governed by multiple regulations – the Stafford Act, the Homeland Security Act of 2002, the Post Katrina Emergency Management Reform Act of 2006, and the National Response Framework – meaning a disaster can simultaneously be declared a Major Disaster, a Catastrophic Incident, and an Incident of National Significance, and be responded to in accordance with the provisions of all of those laws. Any future attempts to modify the disaster management system in the United States must be conscious of this tendency and instead work to produce a system that harmoniously blends old and new elements.

⁷⁵ 42 U.S.C. 9601 et seq.

⁷⁶ Bea, Keith. “Report for Congress: Federal Disaster Policies After Terrorists Strike: Issues and Options for Congress.” Congressional Research Service: The Library of Congress. June 24, 2002. Page CRS-22.

⁷⁷ Pub. L. No. 107-296

⁷⁸ 42 U.S.C. 5193

By failing to account for catastrophes, current American disaster policy has been unable to meet the challenges of large-scale events such as Hurricane Katrina. Well meaning limitations designed with blizzards and tornadoes in mind have been transformed into roadblocks that hamper the ability of the government and private sector to respond and rebuild.

In an era in which the United States faces unprecedented challenges and threats to the safety and well being of its citizens, the Stafford Act must be amended. State and local governments should not be forced to contend with an outdated federal disaster policy that does not recognize twenty-first century threats, does not address catastrophic incidents, and that delays long term recovery by channeling funds through an array of federal agencies instead of providing assistance directly to state and local governments.

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- 42 U.S.C. § 5121 et. seq.
- 42 U.S.C. § 5122
- 42 U.S.C. § 5143
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- 42 U.S.C. § 5170 et seq.
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