

U.S. President Donald Trump visits residents affected by Hurricane Maria in Guaynabo, west of San Juan, Puerto Rico, on October 3, 2017.

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PRESIDENTIAL DECLARATIONS OF MAJOR DISASTER OR EMERGENCY

The U.S. Constitution grants the president special powers in times of catastrophic disaster and national emergency. Beyond this, enactment of the Federal Disaster Relief Act of 1950 gave then and future presidents the authority to officially declare, on behalf of the federal government, major disasters. Presidential authority in disaster policy was further augmented in the Disaster Relief Act of 1974, which provided presidents with the authority to issue emergency declarations that helped mobilize and fund federal, state, and local agencies when a disaster was imminent. At first,

emergency declarations did not require that governors document need or furnish proof that their state and local governments were overwhelmed and therefore unable to handle the incident on their own, as major disaster requests customarily required. Emergency declaration requests from governors have always been scrutinized by presidents and their emergency management officials.¹ Sometimes these requests are turned down by the president, always with FEMA announcing the turndown in place of the president. In recent years, governors or other governor equivalent executives have submitted their emergency declaration requests with preliminary damage assessment data.²

Each president's declaration decisions reveal something about that president as a person, as a public servant, and as a political leader. The record of disaster declarations also says something about each president's view of federal-state-local relations, position with regard to disaster policy and emergency management, use of declarations as an instrument of political power, and understanding of disasters over the era each served.³ In more recent decades, the threat of terrorism has also dramatically increased the range of presidential discretion in declaring events or circumstances as disaster or potential disaster. These events range from suspected small-scale bombings and threats to terror-caused catastrophes. The post-9/11 attacks of 2001, and escalating concern about the threats foreign terrorism may pose to the United States, impelled Congress to grant the president extraordinary power under the Homeland Security Act of 2002 to define disaster in terms of the threat posed and the possible consequences expected by a terrorist action. Ironically, warnings of experts and researchers about hazard vulnerabilities and their potential to cause disaster seem to have been heeded more in the realm of terrorism threat and prevention than in the context of natural or non-terror human-caused disasters.

This chapter explores six "P words" that will help elucidate facts and issues about presidential disaster declarations:

- "Policies" that inhere in declaration-relevant law, executive orders, and regulation, and the two types of disaster declarations: major disasters and emergencies
- "Process" by which declaration requests come to the president
- "Programs," under approved declarations, operated by FEMA that confer federal assistance (programs that help subnational governments and eligible nonprofits, individual and household assistance, and disaster mitigation)
- "Power" the president exercises in deciding whether to approve or reject specific governor requests for declarations, and the ramifications of these decisions in general terms
- "Politics" of disaster declarations, electorally, in partisanship, legislatively, inter-governmentally, etc.
- "Paying" for presidential declarations with public money (e.g., federal budgeting, the Disaster Relief Fund, emergency supplemental appropriations, obligations, pace of payouts, audits, etc.)

Presidents and Congress, often with state and local input, shape and influence disaster policy in general ways as well as in case-by-case decision making. A few new

types of disaster agents the president approves for disaster declaration coverage set precedents that state governors pay close attention to. This is another way declaration policy is shaped. The state governors directly, and members of the U.S. Congress indirectly, play a role in the declaration process. Also, the federal emergency management agency (includes pre-FEMA agencies) has a role, is a major part of the process, and is a force in presidential declaration decision outcomes. Consequently, pre-FEMA (pre-1979) agencies, the independent agency FEMA (April 1979–March 2003), and the Department of Homeland Security FEMA (April 2003–present) will get attention in this chapter. FEMA directors, administrators, or undersecretaries who have headed FEMA through the years, will also be presented. The chapter concludes with a summary of findings.

THE U.S. CONSTITUTION AND EMERGENCY POWERS OF THE PRESIDENT

Under the U.S. Constitution, the president may invoke certain emergency powers in extraordinary circumstances: rebellion, epidemic, national labor strike, or disaster. The president's oath of office requires that he or she "preserve, protect, and defend" the Constitution and uphold its provisions. Although no specific emergency powers were included in the Constitution, principal authorization of emergency powers resides in Article II, Section 3, which states in part that the president "shall take care that the laws be faithfully executed," and Section 2, which grants the president power as commander in chief of the armed forces. In times of crisis, presidents can declare that the Constitution authorizes them to exercise powers usually granted to the legislative or judicial branches of government, thus fusing all governmental power in the executive branch for the duration of the crisis. President Abraham Lincoln justified the actions he took after the outbreak of the Civil War by claiming that the emergency made it necessary for him to exercise legislative powers until he could call Congress back into session. During World War II, President Franklin D. Roosevelt declared that unless Congress repealed a certain provision in a war-related economic measure, he would treat the law as if it had been repealed for the duration of the emergency, in effect threatening Congress with the loss of its legislative powers.⁴

Actual disasters and emergencies through American history have helped to develop, refine, and expand the range of presidential emergency powers under or beyond what is written about them in the U.S. Constitution.⁵ In the mid-20th century and beyond, Congress enacted, with presidential assent, a series of new or revised disaster relief laws, and a great many of these have had the effect of expanding the president's role in disaster management and policy over time.

War as Disaster

One might notice that the word "war" is not mentioned in the preceding section. This is because under the Constitution's War Powers, Article I, Section 8, Clause 11, only Congress has the power to declare war. "The President derives the power to direct the military after a Congressional declaration of war from Article II, Section 2, which names the President Commander-in-Chief of the armed forces." Over time, and given

the myriad ways in which the United States has been attacked or threatened with attack, including by parties using weapons of mass destruction, the presidency has accrued war-making authority in the absence of a formal declaration of war by Congress.⁶ The term “weapon of mass destruction,” in the parlance of social constructivism, has been subject to “reframing” over the past three decades. According to the U.S. Department of Homeland Security, “The United States faces a rising danger from terrorists and rogue states seeking to use weapons of mass destruction. A weapon of mass destruction is a nuclear, radiological, chemical, biological, or other device that is intended to harm a large number of people. The Department of Homeland Security works . . . to prevent terrorists and other threat actors from using these weapons to harm Americans.”⁷ The reframing comes in the “or other device” category. Other devices have come to apply to bombs of any type or size that terrorists, foreign or domestic, have detonated in locations where people have amassed, including on commercial aircraft.

Harold Koh observes, “In 1973, an irate Congress passed the War Powers Act in response to President Lyndon Johnson and President Richard Nixon’s prosecution of the war in Vietnam without a congressional declaration. Under the War Powers Act, the president has 90 days after introducing troops into hostilities to obtain congressional approval of that action. It looks good on paper, but presidents have generally ignored the War Powers Act, citing Article II, Section 2 as their authority to send soldiers into combat.”⁸ For example, consider “the resolution used in 1991 to authorize action by President George [H. W.] Bush against Iraq prior to the Gulf War. That resolution authorized the president to ‘use armed forces pursuant to the UN Security Council’s resolutions passed in response to Iraq’s invasion of Kuwait.’ The resolution (HR-77) went out of its way not to be a declaration of war. In fact, other than saying this constitutes authorization under the War Powers Act, it never used the word “war” at all. It did cite a UN resolution seeking to “restore international peace and security in that area,” so it was only a declaration of war if you can assume that the opposite of peace is sort of war.”⁹

Indeed, international factors also play a role in affording the U.S. president seemingly “extra-constitutional” war-making powers. Koh, writing only a few days after the 9/11 attack, asserts, “The U.N. charter was ratified by the Senate, and as such the president is bound by its terms. Nevertheless, the [2001] attacks on New York and Virginia are clearly war crimes under the U.N. definition. Moreover, Article 51 of the U.N. charter provides for the ‘inherent right . . . of self-defense if an armed attack occurs.’ NATO also took steps toward approving military action [shortly after the 9/11 attacks], by invoking Article 5 of the NATO charter, authorizing the use of force if it is determined that this was an attack from abroad against the United States.”¹⁰ Furthermore, after the September 11 attacks, “the United States Congress passed the Authorization for Use of Military Force against Terrorists (AUMF). While the AUMF did not officially declare war, the legislation provided the President with more authority upon which to exercise his constitutional powers as Commander in Chief. As the U.S. Supreme Court explained in *Youngstown Sheet & Tube Co. v. Sawyer*, Presidential Commander in Chief powers increase when Congressional intent supports the actions taken by the Commander in Chief. The AUMF served as that expression of Congressional intent. AUMF authorizes the President to use ‘all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided in the Sept. 11 attacks.’”¹¹

The War Powers ambiguity continues. Twice in his first 16 months in office, President Trump authorized cruise missile attacks on targeted locations in Syria, both intended to thwart Syrian president Bashar Assad's capacity to prepare or deliver chemical and biological weapons he has used against his enemies.¹² Trump's first attack was in April 2017, directed at an airfield suspected to be the launch site of aircraft Syria used in chemical weapon bombing missions. A year later in April 2018, Trump, aided by British and French military forces, struck with more missiles, this time targeting suspected chemical weapon's production facilities. Neither of these attacks was approved as a formal declaration of war. President Trump is among an almost unbroken line of presidents since 1973 who have launched attacks on other nations, or against non-state actors abroad, outside of a formal congressional declaration of war.

Eric A. Posner claims, in reviewing a book by Benjamin Kleinerman,¹³ that Hamilton, Madison, Jefferson, and Lincoln "all agreed that the president of the United States must have discretionary authority to disregard laws where necessary to address an emergency."¹⁴ They disagreed about whether presidents have implicit constitutional authority to act outside the Constitution. The point is that presidential war-making authority, whether anchored in the Constitution or not, has commingled national security concerns with matters of natural- and human-caused disaster. Moreover, by embracing "all-hazards" emergency management as law, a doctrine of U.S. disaster management, and as a homeland security-emergency management organizing principle, America has recruited its emergency managers into the so-called "war on terrorism."

THE "POLICIES" AND LAWS THAT ESTABLISHED PRESIDENTIAL DISASTER DECLARATIONS

As mentioned previously, before 1950—when Congress considered unique relief legislation for each disaster—awkwardness, delay, pork barreling, and administrative confusion often resulted.¹⁵ By 1950, lawmakers had decided that it made more sense to entrust declaration decision making to the president as an executive responsibility.¹⁶ As Chapter 3 made clear, presidential authority to address domestic disasters won political support in 1950 because many Americans and their elected lawmakers grew concerned that there was no domestic equivalent of the post-World War II Marshall Plan, which sent U.S. aid and funding to countries ravaged by war and famine disaster.¹⁷ Taxpayers complained that they were supporting rebuilding and recovery efforts abroad but not at home.

Ever since presidential disaster declaration authority was enshrined in law, the president has been afforded the discretion to decide on federal declarations of major disaster and emergency. Since the Stafford Act of 1988¹⁸ and several of its predecessor laws, presidents are free, within certain limits, to interpret broadly or narrowly what is declarable as an emergency.¹⁹ Requests for major disaster declarations get tight review. Presidents can pull requests through to approval even if FEMA, using its criteria and threshold system, recommends a turndown. However, experts have determined that such actions are extremely rare and that most requests for major disaster declarations are judged in

accord with FEMA criteria and thresholds.²⁰ Each president makes declaration decisions on a case-by-case basis.²¹

Ordinarily, a governor must ask the president to declare a major disaster or emergency before a state can win a declaration. However, the Stafford Act of 1988 and several preceding laws empower the president to declare a major disaster (since 1950) or emergency (since 1974) “before” a governor asks for one or in the absence of a governor’s request altogether. All governors have the authority to request a declaration. Sometimes in the interest of speeding mobilization a governor may submit an expedited request bypassing the usual process of submitting the request with damage estimates by asking the president and FEMA directly. In addition, federal law permits presidents to issue declarations of major disaster or emergency in the absence of a governor’s request when there is a major federal interest (the federal government is a directly involved party in the event) or when a governor is unable officially to request a presidential declaration.

A presidential declaration of major disaster or emergency has far-reaching consequences because it opens the door to federal assistance and aid by legitimizing the disaster for affected populations.²² The declaration specifies the state or territory and its eligible counties or county-equivalents, including tribal governments, and thereby delineates by location exactly who is eligible for federal relief. Each declaration is issued to a state or the District of Columbia or an American trust territory, commonwealth, or free-association partner. When a declaration identifies counties eligible to receive federal disaster assistance, unincorporated jurisdictions within the county will be eligible for assistance. Incorporated (often chartered) municipalities within a county may receive federal assistance passed through by the state or by the county, depending upon the procedures used in each state. Cities that are coincident with a county or counties (e.g., New York City comprises five counties) are treated as if they are stand-alone counties.

Some major disaster declarations issued by the president make every county in a state eligible for some form of federal disaster assistance. When every county of a state is included, that state’s governor must have either asked for this in his or her original request or it must have been agreed to in governor–FEMA negotiations.²³ Unrequested but invited all-county emergency declarations are not unprecedented. In matters of “federal interest” disasters or for certain emergency declarations (e.g., President G. W. Bush’s 2006 emergency declaration inviting almost all states, to take advantage of a preapproved emergency declaration that subsidized their respective state and local costs incurred in helping Hurricane Katrina victims who had resettled in their jurisdictions), presidents may in effect solicit emergency declaration requests from governors. This said, usually presidential declarations apply only to the counties that governors have asked them to cover. Moreover, FEMA may add counties to an already in-force presidential disaster declaration without the need for presidential preapproval. In such cases, the added counties must have met or exceeded the FEMA county per capita loss qualification threshold (see the “Process” section).

Presidential declarations of major disaster and emergency are intriguing because authority to make the essential decision rests only with the president. Most federal laws require implementation decisions by legions of government officials, many of whom operate some distance from the president.²⁴ Admittedly, once the president issues a declaration, federal agency and program officials, usually in concert with their state and local counterparts, undertake an elaborate and extensive assortment of implementing

decisions. Yet the president's decision to push either the "approval button" or the "denial button" is often highly consequential.²⁵

Every presidential declaration contains an initial statement about the kinds of program assistance people or subnational governments may be eligible to request. This is crucial because it determines whether disaster victims will receive direct cash grants, housing supplements, emergency medical care, disaster unemployment assistance, and so forth. It also specifies whether or not state and local governments themselves are eligible to receive federal disaster assistance to replace or repair public facilities and infrastructure. Certain nonprofit organizations may also qualify for federal disaster aid of various types. Moreover, public and privately owned utilities—electric, natural gas distribution, communications (cable service, Internet, Wi-Fi towers, and telephone), water purveyors, wastewater treatment services, certain transportation providers, etc.—may also receive federal assistance to cover repair or replacement of their disaster damaged infrastructure and equipment. As mentioned, federal disaster relief may flow to sub-county incorporated municipalities but only those that are located in counties included in the presidential declaration, and usually through a preset system of state and/or county pass-through.

A presidential declaration is vitally important to those directly affected by the disaster or emergency. It confers on them an "official" victim status needed to qualify for federal aid. Under the Individuals and Households Program, people may apply and qualify for various forms of federal disaster assistance under a declaration (see the "Programs" section). Many declarations also make aid available through the Public Assistance Program (FEMA) (again, see the "Programs" section), which provides government-to-government (federal-to-state or local) disaster relief to subsidize much of the cost of repairing, rebuilding, or replacing damaged government or utility infrastructure. Enactment of the Stafford Act in 1988 authorized presidential declarations of major disaster to include hazard mitigation funding calculated as a percentage of the total federal payouts to the state under the declaration.

To the public, including those not directly affected by the disaster, a presidential declaration of major disaster or emergency is significant for other reasons. At a basic level, a declaration signifies that a serious event has occurred, requiring the attention and resources of the federal government. The symbolism and content of the presidential declaration structures popular perceptions about the nature and scope of the disaster. Indirectly, a presidential declaration may encourage private charitable contributions from people and businesses near or far from the damage zone. It may also help to mobilize more responders and volunteers to serve in the response and recovery phases of the incident.

The increasing number and changing "variety" of presidential disaster declarations reveals in some respects the nation's history of disaster experience and its increasing vulnerability to disaster agents and forces. "Variety" refers to the types and causes of hazards and incidents granted presidential declarations of major disaster or emergency. Some declarations have little or nothing to do with natural hazards or natural disasters and nothing to do with terrorism. In some cases, a problem is sufficiently anomalous (see the "Tell Me More" 4-1 box on page 162) that a president is not guided by existing law, policy, or precedent, yet he or she (yes, in the near future "she") feels compelled to act and a presidential declaration of major disaster or emergency is an available action tool. The record of disaster declarations also connotes change in public, media, and official views about what "disaster" means, changes in

federal–state relations, changes in various presidents’ perception and use of disaster declaration authority, and changes in disaster law and management over time. Beyond this, there is speculation that new vulnerabilities and emerging threats (i.e., cyber-terror, bio-terror, failures in border security, massively dislocating economic crimes, etc.) may extend the “disaster declaration umbrella” to cover more and more problems or potential problems a president would be expected to address. Some of these mishaps or acts of sabotage may not fall within Stafford Act jurisdiction; however, incidents involving fire and explosion do.

Federal Disaster Relief Law and Declaration Authority

To understand presidential disaster declarations, it is necessary that we briefly revisit some of what was covered in Chapter 3. Congress passed the first permanent statutes authorizing federal disaster assistance in 1947²⁶ and 1950. The 1947 law provided surplus property and personnel as needed, and its 1950 counterpart gave the president authority to determine what type of aid was required. President Harry S. Truman issued several dozen disaster declarations, most of which were for flood and that conveyed technical assistance and mostly government surplus items (much from post-WWII stockpiles of military equipment) to the states impacted. Nonetheless, these two laws changed the nature and process of disaster relief in the United States. Only later did congressional leaders begin to see the 1950 act as precedent setting and as an early, general, national-level disaster policy model.

The Federal Disaster Relief Act of 1950 (Public Law 81-875) (DRA of 1950, for short) specified for the first time that federal resources could and should be used to supplement the efforts of others in the event of a disaster. The new law made federal disaster assistance more accessible since it no longer required specific congressional legislation to address each new disaster but instead simply empowered the president to decide when federal disaster assistance was justified and necessary. However, federal assistance was intended to supplement, not replace, state and local disaster management efforts. It was also directed to facilitate some disaster response and recovery efforts, more than to advance disaster preparedness and mitigation efforts. The DRA of 1950 provided “an orderly and continuing means of assistance by the federal government to states and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters.”²⁷

An updated definition of “major disaster” under the Stafford Act of 1988 is as follows. Also, under the Sandy Recovery Improvement Act of 2013, Native American tribal governments were treated as states for the purpose of making disaster declaration requests directly to the president or through FEMA to the president:

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 that in the determination of the President, causes damage of sufficient severity and magnitude to warrant **major disaster assistance** under the Stafford Act to supplement the efforts and available resources of the States, Local Governments,” (Native American Tribal Governments), and disaster relief organizations in alleviating the damage, loss, hardship, or suffering thereby.²⁸

Congress built on the 1950 act by passing several laws in the 1970s that expanded the scope of federal government responsibility in disasters. For example, the Disaster Relief Act of 1974 (Public Law 93-288) created a program that provided direct assistance to individuals and families following a disaster. Importantly, the act gave the president the power to declare an emergency as well, whereas previously only a major disaster could be declared. The 1974 law's narrow "emergency" language was superseded by the Stafford Act of 1988, which conveyed broader authority to the president:

Emergency: 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 catastrophe in any part of the United States.²⁹

An emergency is often of less magnitude and scope than a major disaster. However, the president may issue an emergency declaration to address an ongoing event that may later be declared a major disaster.

The Disaster Relief Act of 1974 also called on the president to:

- Establish a program of disaster preparedness using the services of all appropriate federal agencies
- Make grants for the development of plans and programs for disaster preparedness and prevention
- Declare a major disaster at the request of a governor
- Make contributions to state or local governments to help repair or reconstruct public facilities
- Make grants to help repair or reconstruct nonprofit educational, utility, emergency, and medical and custodial care facilities
- Purchase or lease temporary housing, and provide temporary mortgage or rent payment assistance
- Provide assistance to people unemployed as a result of the disaster
- Provide additional relief, including food coupons and commodities, relocation assistance, legal services, and crisis counseling
- Make grants to a state for the state to provide grants to individuals and families if assistance otherwise provided by the act is inadequate
- Make loans to local governments suffering a substantial loss of tax and other revenues³⁰

Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act in 1988 (Public Law 100-707). This law slightly changed presidential declaration authority. In one provision it sought to restrict the president from using declaration authority to cover border penetrating immigration crises.³¹ The Stafford Act maintained the president's right to issue major disaster declarations and empowered the president to confer these types of federal disaster assistance:

- General federal assistance for technical and advisory aid and support to state and local governments to facilitate the distribution of consumable supplies
- Essential assistance from federal agencies to distribute aid to victims through state and local governments and voluntary organizations, perform lifesaving and property-saving assistance, clear debris, and use resources of the U.S. Department of Defense (DOD) before a major disaster or emergency declaration is issued
- Hazard mitigation grants to reduce risks and damages that might occur in future disasters
- Federal facilities repair and reconstruction
- Repair, restoration, and replacement of damaged facilities owned by state and local governments, as well as private nonprofit facilities that provide essential services or commodities

In congressional language, the Stafford Act called on the federal government to set forth an orderly and continuing means of assistance to state and local governments as each endeavor to alleviate the suffering and damage that result from disasters. The law tasked the federal government, most particularly FEMA, with these obligations:

- Revising and broadening the scope of existing disaster relief programs
- Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the states and by local governments
- Achieving greater coordination and responsiveness of disaster preparedness and relief programs
- Encouraging individuals, states, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance
- Encouraging hazard mitigation measures to reduce losses from disasters, including development of land-use and construction regulations
- Providing federal assistance programs for both public and private losses sustained in disasters³²

The Stafford Act also provides federal post-disaster relief assistance under fixed dollar limits and means-testing on relief to individuals and households (see the “Assistance to Individuals and Households Program” section examined ahead). Stafford also maintains federal to state and local government assistance (see the “FEMA Public Assistance Program” section). This subsidizes repair or replacement of disaster damaged state or local infrastructure or facilities and is done as a percentage of eligible costs, usually on a 75/25 federal/state and local cost share basis. In addition, the indistinctiveness of the federal definition of “emergency” has allowed presidents to add new categories of emergency. For more information about federal disaster assistance programs and vagueness of criteria, see the “Tell Me More” boxes later in this chapter.

The **Sandy Recovery Improvement Act of 2013** (P.L. 113-2) “authorizes the chief executive of a tribal government to directly request major disaster or emergency declarations from the President, much as a governor can do for a state.”³³ Under the Stafford Act of 1988 “tribes were dependent on a request being made by the governor of the state in which their territory is located.”³⁴ Tribal governments maintained that this requirement undermined their independence and sovereignty, keeping them from obtaining needed assistance. Moreover, some tribal lands overlap state borders. For the declaration process, the Sandy Act of 2013 has now made tribal governments the equivalents of state governments. Governors are still free to add major disaster or emergency impacted tribal lands (as local governments) in their respective state requests for presidential declarations. The benefit for tribal governments is that in the past it has been difficult for many state emergency management officials to assess disaster damage on tribal lands owing to language and cultural differences as well as to the physical isolation of many tribal areas and reservations. The new law includes a section that allows the president to waive the nonfederal contribution (same as state cost share) or to adjust the cost share to a more generous match for tribal governments under the FEMA Public Assistance Program.³⁵

THE “PROCESS” FOLLOWED IN REQUESTING PRESIDENTIAL DECLARATIONS

Both the DRA of 1950 law and the Stafford Act of 1988 stipulate that the governor of an affected state must formally ask the president to declare a major disaster or emergency. If the request is granted, the federal government will then provide disaster assistance “to supplement the efforts and available resources of state and local governments in alleviating the disaster.”³⁶ The governor must provide certain information on the severity and magnitude of the disaster and on the amount of state and local resources to be committed to the disaster or emergency. The president is given wide discretion to determine whether the disaster or emergency is of sufficient severity and size to warrant federal disaster or emergency assistance. The authority to declare a disaster carries with it the power to determine the types of federal disaster assistance that will be made available to state and local governments and to individuals, families, and households. Ever since they were entrusted with declaration authority, each president has labored to protect this authority from being eroded by Congress, and no president to date has advocated delegating this responsibility to an executive branch official.

As stated previously, the Stafford Act (§401) requires that “all requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State.” A State also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance. Only governors, or when the governor is unavailable, their lieutenant governors, can request presidential declarations of major disaster or emergency.³⁷ Sub-state executives (i.e., mayors, county executives, city managers, etc.) seeking presidential declarations must ask for them through their governor and appropriate state offices. Legislators can advocate that the president confer such declarations, but they are not part of the official request process.

The governor's request is made through the regional FEMA office. State and federal officials conduct a **Preliminary Damage Assessment (PDA)** to estimate the extent of the disaster and its impact on individuals and public facilities. This information is included in the governor's request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of his or her state and respective local governments and that federal assistance is necessary.³⁸ Normally, the PDA is completed prior to the submission of the governor's request. However, when an obviously severe or catastrophic event occurs, the governor's request may be submitted prior to the PDA. Nonetheless, the governor must still make the request.

"As part of the request, the Governor must take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage, including the disaster impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act."³⁹ In addition, the governor will need to certify that, for the current disaster, state and local government obligations and expenditures (of which state commitments must be a significant proportion) will comply with all applicable cost-sharing requirements.

Based on the governor's request, the president may declare that a major disaster or emergency exists, thus activating an array of federal programs to assist in the response and recovery effort. Not all programs, however, are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment and any subsequent information that may be discovered.⁴⁰

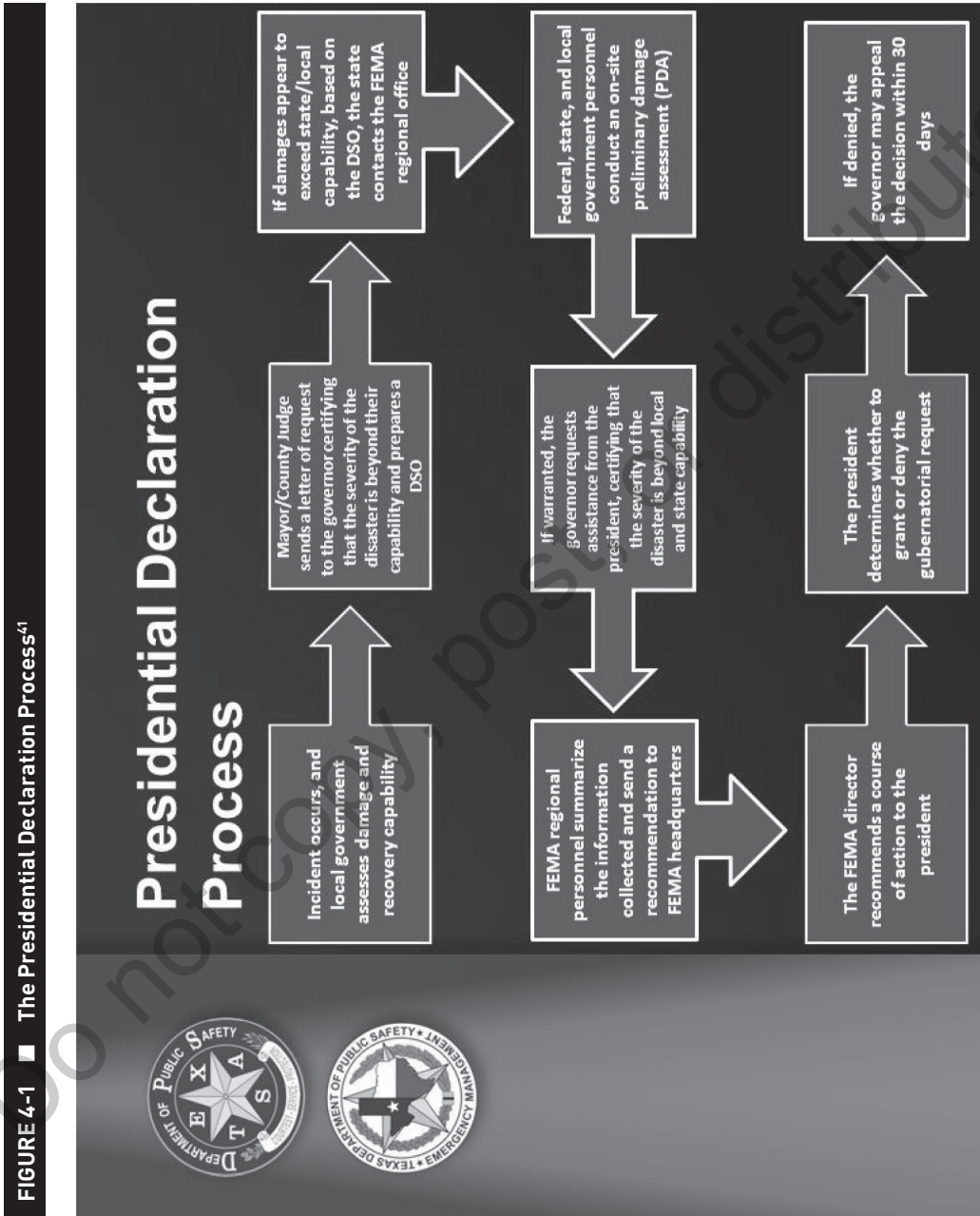
Some declarations will provide only individual assistance or only public assistance. Since 1988, FEMA hazard mitigation funding is also made available to states, and their respective localities, for FEMA-approved mitigation projects in most cases.

The Texas Department of Public Safety, Division of Emergency Management, posted a set of slides online on June 2, 2015, that provides a clear picture of the general pathway followed in the declaration process. Although the process may slightly vary in other states, the graphic portrays the application process well. See Figure 4-1.

The Role of Governors

Many governors, as state chief executives, possess emergency powers applicable to disasters or emergencies within their respective states. They have at their disposal state emergency management agencies, other state agency assistance, and the state's National Guard (along with reserve and active-duty forces made available by the president, if needed).

Through state legislative work and often governor assistance, state governments enact emergency management laws. A variety of state agencies fashion codes and regulations subject to supervision by the governor and oversight by the state legislature. State government is a conduit through which extensive federal-local interchange takes place. In turn, state governments are responsible for implementing and enforcing a great many federal laws, among them federal emergency management laws. States are obligated to assist their respective local governments in development and maintenance of emergency management responsibilities.



Source: Texas Department of Public Safety, Division of Emergency Management, "TCEQ Regional Workshop: Emergency Response Preparing for Disasters and Emergency Incidents." In this chart, a DSO is a Disaster Summary Outline. It is a document that local organizations need to submit under the Texas declaration process.

Governors play a key role in the presidential declaration process. They need to mobilize and supervise their state agencies as those agencies address the emergency or disaster. They need to ensure that disaster loss information has been compiled and included in their request to the president. They need to consult and work cooperatively with local elected executives and other local government officials who are in the areas affected by the disaster or emergency. When a disaster strikes, local authorities and individuals often request help from their state government as well as private relief organizations. Local governments sometimes seek federal disaster assistance, often with state encouragement. Customarily, the process begins when county or municipal leaders, or both, ask their governor to declare a state emergency. These same local officials may ask the governor to request a presidential declaration. Governors may issue, if they believe it is warranted, a state declaration of disaster. They typically do this through an executive order or proclamation. The order usually describes the nature of the emergency, where it occurred, and the authority under which the governor makes the declaration.

Often, governors request presidential emergency declarations when a disaster seems imminent and federal aid would help in the pre-event response stage of a disaster. Many of these emergency declarations cover events that do not later earn a presidential declaration of major disaster.

Although the president has legal authority to issue a declaration of major disaster or emergency in the absence of a governor's request, presidents have the authority to declare an emergency if the "emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority." A good example is the *Columbia* space shuttle explosion of 2003. Since NASA is a federal program, the federal government is responsible for the cleanup and recovery. President George W. Bush invited governors of states thought to be within the debris field of the shuttle's remnants to take advantage of a preapproved emergency declaration he had offered them to cover state expenses incurred in searching for, collecting, and protecting astronaut remains and shuttle parts. (See "Tell Me More" 4-2 box on page 165.)

Governors almost always consult their respective state emergency management officials before requesting a presidential declaration. The governor may authorize a state-level PDA if state officials are not already assessing damage with local authorities. Sometimes, if the disaster appears to be beyond state and local response capacity, the governor can ask FEMA to join state and local personnel in conducting a PDA. On account of the vagueness of the criteria FEMA uses to judge governor requests to the president, plus each governor's keen awareness that under federal law the president can disregard any FEMA recommendation to deny a major disaster request that fails to meet the agency's criteria, governors must contemplate whether to request presidential declarations in an uncertain environment. They can consider previous presidential approvals and turndowns as precedents. They can gauge the degree of newsworthiness their state's calamity has drawn. However, the mere fact that their disaster request may not qualify for a declaration under FEMA criteria is seldom enough to deter them from asking the president to issue their state and its impacted localities a declaration (see the "Politics" section). The "Tell Me More" 4-2 box (page 165) encapsulates, from a governor's perspective, the twin issues of vague FEMA criteria and subjective presidential decisions.

Governors, in requesting emergency declarations, do not have to prove to the president that the emergency disaster is beyond state and local response capabilities. Instead, they have to demonstrate that federal assistance is needed to save lives, protect property

and public health, or lessen or avert the threat of catastrophe. Under federal law, FEMA expenditures under an emergency declaration may not exceed \$5 million.⁴² However, when an emergency declaration is in effect and federal spending approaches the \$5 million limit, the president need only notify Congress in a letter that the \$5 million cap will be exceeded, and this allows spending on the emergency declaration to exceed the limit. Many events that have earned emergency declarations have exceeded \$5 million, and the president has routinely notified Congress that spending would exceed the cap in these incidents. Governors appreciate presidential declarations of emergency because they supply federal funds and other assistance quickly, do not require the collection of state and local information to document need, and often furnish help when the full scope of the emergency or disaster is either not yet understood or is still unfolding.

The Federal Emergency Management Agency Director

The FEMA director/administrator is a politically appointed official who is often personally selected by the president, and is subject to U.S. Senate confirmation; typically that person is one of his political confidants or supporters. Since the creation of FEMA in April 1979, some FEMA directors/administrators have had previous experience in emergency management and some have not. Table 4-1 lists appointed and Senate-confirmed FEMA directors (1979–2002) or administrators/undersecretaries (2002–present). Table 4-1 does not include the names and terms of acting FEMA heads who are temporary appointees.

The head of FEMA is in effect the chief executive officer of the agency, although some who have been appointed to the post have been satisfied in delegating day-to-day management of the agency to the deputy administrator. Under the Post-Katrina Emergency

TABLE 4-1 ■ FEMA Directors and Administrators, 1979–2018, with Appointing President⁴³

FEMA Directors/Administrators* and Period in Office	Appointing President
John Macy, August 1979 to January 1981	James E. Carter
Louis O. Giuffrida, May 1981 to September 1985	Ronald R. Reagan
Julius W. Becton Jr., November 1985 to June 1989	Ronald R. Reagan
Wallace E. Stickney, August 1990 to January 1993	George H. W. Bush
James L. Witt, April 1993 to January 2001	William J. Clinton
Joseph M. Allbaugh, February 2001 to March 2003	George W. Bush
Michael D. Brown, March 2003 to September 2005	George W. Bush
R. David Paulison, September 2005 to January 2009	George W. Bush
W. Craig Fugate, May 2009 to January 2017	Barack H. Obama
W. Brock Long, June 2017 to present	Donald J. Trump

Source: FEMA, "The Federal Emergency Management Agency," Publication 1, November 2010. At https://www.fema.gov/media-library-data/20130726-1823-25045-8164/pub_1_final.pdf.

* Does not include acting directors/administrators

Management Reform Act of 2006 (P.L. 109-295) (PKEMRA), introduced in Chapter 3, the FEMA administrator has been given a more direct line of access to the president, albeit with expected consultation of the DHS secretary, during periods of disaster response and when carrying out his or her responsibility to help in the processing of emergency and major disaster declaration requests submitted by governors. Several of the FEMA heads in Table 4-1 were discussed in Chapter 3, and they and others will come up in later chapters.

Typically, the route of a governor's request starts with the regional FEMA director, who receives a request, reviews it, and sends a recommendation to FEMA headquarters in Washington. There, a declaration processing unit prepares documents pertaining to the request, and the administrator of FEMA, after compiling information for the president about the event and, often, consulting with the governors who have requested the declarations, adds a memorandum recommending to the president a course of action: approve or reject. All the information FEMA sends to the president, including the director's recommendation, is protected by rules of executive privilege and therefore unavailable for public scrutiny. The president is neither bound by FEMA's recommendation nor obligated to follow the agency's declaration criteria. The president alone determines whether to approve or reject every governor's request.

Here are some common factors FEMA officials consider before they make their recommendation:

- Number of homes destroyed or sustaining major damage
- The extent to which damage is concentrated or dispersed
- The estimated cost of repairing the damage
- The demographics of the affected area
- State and local governments' capabilities

The Stafford Act does not prescribe exact criteria to guide FEMA recommendations or the president's decision. As a prerequisite to federal disaster assistance under the act, though, a governor must take "appropriate action" and provide information on the nature and amount of state and local resources committed to alleviating the disaster's impacts. Other relevant considerations include the following:

- The demographics of the affected areas with regard to income levels, unemployment, concentrations of senior citizens, and the like
- The degree to which insurance covers the damage
- The degree to which people in the disaster area have been "traumatized"
- The amount of disaster-related unemployment the event has produced
- The amount of assistance available from other federal agencies, such as the SBA and its disaster loans to homeowners and businesses
- The extent to which state and local governments are capable of dealing with the disaster on their own

- The amount of disaster assistance coming from volunteer organizations and the adequacy of that assistance given the magnitude of the disaster
- The amount of rental housing available for emergency occupancy
- The nature and degree of health and safety problems posed by the disaster and its effects
- The extent of damage to essential service facilities, such as utilities and medical, police, and fire services⁴⁴

FEMA also evaluates the impacts of a disaster at the county, local government, and tribal levels. It considers the following:

- Whether critical facilities are involved
- How much insurance coverage is in force that could provide affected parties reimbursement for various losses
- The degree of hazard mitigation a state or local government has undertaken prior to the disaster
- Recent disaster history of the respective state and its localities
- The availability of federal assistance aside from that to be provided by a presidential declaration

Factors that reduce the chances that a governor's request for a presidential declaration of major disaster or emergency will be approved are several. Obviously, major infrastructure loss and widespread or intense human suffering advances deservedness, whereas ample insurance coverage that helps alleviate loss and advance recovery diminishes worthiness. Presumably, when it can be shown that the requesting government(s) failed to take reasonable steps to prevent a minor incident from occurring, deservedness goes down.

Sometimes other federal agencies besides FEMA host disaster programs that may sufficiently address the needs of the disaster in question, such that a presidential declaration of major disaster or emergency is unnecessary. Governors contemplating, or formally in the process of, filing requests for presidential declarations may be dissuaded from doing so by FEMA or White House officials. They may be advised that given the nature of their problem, other federal programs may provide help that is better suited to assist them. For example, when the I-35 bridge collapsed spectacularly in Minneapolis in August 2007, the Minnesota governor was advised that a presidential disaster declaration was unnecessary because the U.S. Department of Transportation (DOT), aided by the U.S. Army Corps of Engineers (USACE), the FBI, and other federal agencies, would make help and resources available such that a presidential disaster declaration was duplicative and so⁴⁵ unwarranted.⁴⁶

When a governor seeks a presidential declaration for an incident that does not conform to standard eligibility requirements, FEMA may recommend to the president that the governor's request be denied. Presidents regularly turn down gubernatorial requests

for major disasters or emergencies.⁴⁷ However, in rare cases, presidents approve requests for major disaster declarations when damage in the state is light and the state may have been able to recover from the event without federal assistance.⁴⁸

Table 4-3 shows that a total of 789 turndowns for majors and 131 turndowns for emergency were announced between May 1953 and August 2017.⁴⁹ For all 12 presidents, Eisenhower to Trump, there is a one-in-four chance of a turndown of governor requests on major disasters and only slightly less than a one-in-four chance of turndown when governors request emergency declarations. Table 4-3 shows that pre-FEMA presidents Eisenhower, Kennedy, Johnson, Nixon, and Ford had, by modern standards, high rates of turndown on major disaster requests; Johnson rejected 53 percent and Nixon 53 percent. Eisenhower (34%), Kennedy (30%), and Ford (32%) reject about 3, or slightly more, requests of every 10 requests they receive. Oddly, Carter, the president who championed FEMA's creation, rejected 45 percent of all the governor requests for major disaster declarations he received. It may be that governors in the Carter years needed time to become accustomed to FEMA's per capita threshold Public Assistance criterion. As mentioned previously, Carter was tough on requests for majors but less strict in turning down requests for emergencies (39%). Reagan went easier on major requests (34% turndown rate) but was extremely tough on emergency requests (64%). A "sea change" occurred in turndowns after 1988. Presidents from G. H. W. Bush to Trump turn down only about one in five requests for majors, with G. W. Bush and Obama at very low rates of turndown (16.3% and 16.7%, respectively).

When numbers of major disaster declarations are considered for full two-term presidents, Eisenhower shows 106, Reagan has 184, Clinton has 380, G. W. Bush 458, and Obama 476. This is a very substantial rate of increase even given the long time span considered. Another way to consider change over time is that from May 1953 to Jan. 1993, a span of just under 40 years, a total of 976 major declarations were issued. From Jan. 1993 to Nov. 2017, a little less than 25 years, 1,368 majors were approved.

FEMA relies most heavily on how the assessment of a state's capability compares with the costs imposed by the disaster. Each governor requesting a declaration is expected to demonstrate to FEMA and the president that the state is "unable to adequately respond to the disaster or emergency," of whatever nature, and that federal assistance is therefore needed. The "unable to adequately respond" condition is often highly controversial. Some governors claim that state budget limitations make it impossible for them to "adequately respond." Some claim that they do not have reserve funds sufficient to pay for the costs of the response.

Some governors have explained that their state has no disaster relief programs in law to match FEMA's, and so in the absence of a presidential declaration many victims will be without government assistance. FEMA officials, and the president, may find it difficult to determine whether a state is "unable to adequately respond," drawing on their own resources. It is possible that DHS-FEMA officials advising the president on whether to approve or reject a governor's request for a declaration of major disaster may inform the president that the requesting state has not established state-funded disaster relief programs that parallel FEMA's programs. Weighing the merit of a request is often complicated by news media coverage of the event, political pressures imposed on both FEMA officials and the president by legislators and other officials in the damage zone, and the difficulty of measuring state (and local) disaster response and recovery capacity.

Under the Public Assistance (PA) program (the government-to-government aid) that pays for infrastructure repair and reimburses certain disaster expenses of nonprofit organizations, FEMA examines the estimated cost of the assistance, using such factors as the cost per capita within the state. Table 4-2 reveals that in FY 2018, FEMA, under its Public Assistance program, used a figure of \$1.46 per capita damage costs as an indicator that the disaster is of sufficient magnitude to warrant federal assistance.⁵⁰ (See Table 4-2.) This figure is adjusted annually based on changes in the Consumer Price Index. So, in straightforward terms, in 2018 a state with a 2010 U.S. Census population of about 1 million (Montana and Rhode Island, for example) has to demonstrate that it has experienced damage costs (not covered by insurance) that meet or exceed \$1,460,000 to hit FEMA's threshold of qualification. Remember, as ever, presidents are not bound by FEMA's criteria when they consider governor requests for major disaster declarations. Note as well that these must be eligible damages to public infrastructure and facilities, including public or privately owned utilities, and eligible nonprofit organizations.

Similarly, FEMA established for each county a cost-indexed threshold.⁵¹ According to Table 4-2, a county must have experienced \$3.68 per capita to meet FEMA's threshold of qualification. Let us assume that a county has a population of about 2 million in the 2010 U.S. Census. For example, King County in Washington State had a 2010 U.S. Census population of nearly 2 million (1,931,249). For King County, WA, to meet FEMA's county threshold of disaster loss, it would have to document eligible damage of \$7,360,000 (about \$7,106,996 if its actual 2010 Census population were used). At this writing, the formula uses population of the jurisdiction as determined in the 2010 official U.S. Census. Population is then divided into estimated damage cost.

Presumably, if any county is to be added to an in-force major disaster declaration, the county's disaster per capita loss figure should meet or exceed the FEMA county per capita loss threshold. When this happens, FEMA may approve the county as eligible for assistance without the need to ask the president. Still, both FEMA and the president may take into account factors beyond meeting or exceeding the county per capita loss threshold when county officials seek to be included in a major disaster declaration. Not to be forgotten is that per capita loss thresholds are NOT used in the Individual and Households Program (IHP). Consequently, if the president decides to issue a major disaster declaration on grounds that individuals and households deserve the assistance a declaration can provide, the declaration request may be approved. FEMA records show that sometimes declarations to states include IHP coverage but not PA coverage. Sometimes this is reversed. However, most declarations convey both IHP and PA assistance. Also, since 1988, the bulk of major disaster declarations include hazard mitigation assistance (Section 406 of the Stafford Act).⁵²

Remember that there is a "county" track and a "state" track. For the state track, the estimated disaster costs for each county the governor includes in her or his request is cumulated and added to the state government's own disaster costs. The resulting figure is then divided by the population of the entire state in the most recent U.S. Census, thus yielding the state's per capita loss figure. If this amount exceeds the FEMA per capita loss threshold for the state (a total determined by FEMA administratively well in advance of the disaster in question), presumably the agency recommends that the president approve the governor's major disaster declaration request. State per capita loss totals that fail to meet the FEMA threshold usually are sufficient evidence to FEMA officials that the governor's request may warrant a presidential turndown.

However, it is difficult and sometimes impossible for FEMA officials to ascertain that an event is worthy of a presidential declaration unless PDAs are first conducted and analyzed (often through photographs or video recordings) or unless media coverage of the event makes it obvious a major disaster has occurred. Moreover, it is difficult to judge whether state and local areas are capable of recovering on their own if disaster damage has not been assessed beforehand. Consequently, sometimes the president issues declarations of major disaster without documentary evidence that the misfortunes have met FEMA qualifying criteria.

FEMA Declaration Request Processing

The federal declaration process usually follows these steps. See Figure 4-2 for a flow chart showing the path a governor request for a major disaster declaration usually follows. If the governor requests a major disaster declaration through FEMA, the agency prepares a **White House package**. The package contains documents prepared for the president's action on a governor's request. The package includes the governor's request and the FEMA director's memorandum, made up of the following items:

- Summary of significant aspects of the event
- Statistics relative to damage and losses
- Outlines of the contributions made by federal, state, local, and private agencies
- List of the unmet needs for which the governor seeks federal assistance
- Recommended course of action for the president

The package also contains appropriate letters and announcements related to the action, including the FEMA director's recommendation to the president regarding whether to approve or deny the governor's request.

In many cases the FEMA regional office initially receives the governor's request first; officials there prepare a regional summary, analysis, and recommendation. The summary contains only factual data concerning the disaster event, whereas the analysis and recommendation sections may contain opinions and evaluations. The FEMA regional office forwards the governor's request along with the regional summary, analysis, and recommendation to FEMA national offices. At headquarters, the director and senior FEMA staff evaluate the request, prepare the White House package, and then forward it on to the president accompanied by the FEMA director's recommendation. The president is free to accept or reject the governor's request. Finally, the president makes a decision to either grant or deny the request.

The White House Staff

The White House staff consists of key aides whom the president sees daily—the chief of staff, congressional liaison people, the press secretary, the national security adviser—and a few other political and administrative assistants. About 500 people work on the White House staff, most of whom see the president rarely but provide a wide range of services.⁵³ Some of these people, such as the White House chief of staff and the domestic

policy advisor, are assumed to play a role in helping the president consider governors' requests for declarations of major disaster or emergency.

Most presidents rely heavily on their staffs for information, policy options, and analysis. Different presidents have different relations with, and means of organizing, their staffs. Different presidents also have different leadership and management styles. President Carter was a “detail man,” toiling ceaselessly over memoranda and facts. President Reagan was the consummate “delegator,” who entrusted tremendous responsibilities to his staff. President George H. W. Bush fell somewhere between the Carter and Reagan extremes and was considerably more accessible than President Reagan. President Clinton, like Carter, was a detail person but also someone who ran an open White House with fluid staffing.⁵⁴ President George W. Bush was a delegator who followed a chief executive officer model of management and who preferred a less open White House. President Barack Obama tended to focus “at high levels where there’s disagreement at agencies or among advisors”—so he could then make an executive decision.⁵⁵ Obama preferred to let problems percolate up through his staff and senior administrators, often tolerating considerable disagreement, until he determined the right time to intervene. He was known as a regular mediator of disputes, and he was skilled at pacifying his administrators after conflicts. President Trump relies heavily on his own independent judgments but is aided by staffers he knows and trusts. Trump often has reservations about the validity of information and documents provided to him by senior federal civil servants. Perhaps reflecting his business background, President Trump sees loyalty paid to him as the first order requirement of an adviser, staffer, or senior public servant. Loyalty and trust convey credibility in the Trump White House. President Trump has entrusted certain of his close family members with high White House posts, although he does not always support or concur with their views or recommendations. The Trump White House and Cabinet has experienced very high turnover over in its first two years. Regardless, President Trump’s record in approving or denying governor requests for major disaster declarations and emergencies, based on 2017 data, is very similar to that of his predecessor, Barack Obama (see Table 4-3).

When the White House package is delivered to the Office of the President by a FEMA official, from then on it is protected by **executive privilege**. “President Dwight Eisenhower was the first president to coin the phrase ‘executive privilege’ but not the first to invoke its principle: namely, that a president has the right to withhold certain information from Congress, the courts or anyone else—even when faced with a subpoena. . . . Presidents have argued that executive privilege is a principle implied in the constitutionally mandated separation of powers. In order to do their job, presidents contend, they need candid advice from their aides—and aides simply won’t be willing to give such advice if they know they might be called to testify, under oath, before a congressional committee or in some other forum.”⁵⁶

In any disaster or emergency, many offices are likely to engage in facilitating the president’s work. Clearly, the White House Political Affairs Office and the Communications Office would be tasked to help the president address a disaster or emergency, especially in cooperation with the White House press secretary and press office. The White House Homeland Security Council and perhaps the National Security Council (NSC) would also be involved.⁵⁷ The “Tell Me More” 4-3 box on page 169 about presidents and public relations underscores how presidents must be aware of and responsive to news media coverage of disasters or emergencies, transpiring or impending, as these rapidly ascend to national newsworthiness.

THE “PROGRAMS” OF FEDERAL EMERGENCY MANAGEMENT

What help do governments and people expect under the two post-disaster assistance programs from the Federal Emergency Management Agency (FEMA)?

FEMA Public Assistance Program

The **Public Assistance Program (FEMA)** provides grants to state and local governments and certain nonprofit entities to help them in their response to, and recovery from, disasters. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure.⁵⁸

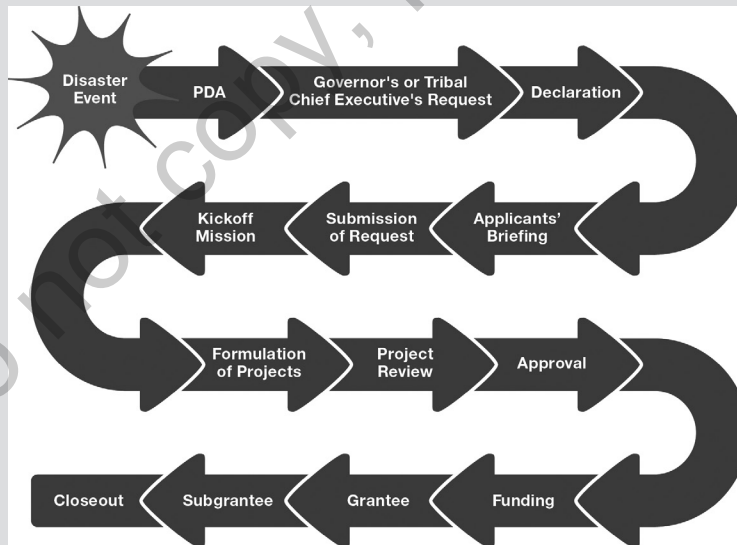
Eligible Applicants: Eligible Public Assistance (PA) applicants include state governments, local governments, and any other political subdivision of the state; Native American tribes; and Alaska Native Villages. Certain private nonprofit

organizations may also receive assistance. Eligible private nonprofits include educational, utility, emergency, medical, temporary or permanent custodial care facilities (including those for the aged and disabled), irrigation, museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation, shelter workshops and health and safety services, and other private nonprofit facilities that provide essential services of a governmental nature to the general public. It also extends to public-serving museums, zoos, horticultural institutions, as well as sport and recreational stadiums and facilities.

FEMA's PA Program general pathway consists of:

- Preliminary damage assessment
- Governor's or tribal chief executive's request

FIGURE 4-2 ■ Process Steps When a Presidential Disaster Declaration Is Approved and Includes Public Assistance Program Help to State and Local Governments⁵⁹



Source: FEMA, "IS-634 Introduction to FEMA's Public Assistance Program, Lesson 2: Steps in the PA Process," undated. At <https://emilms.fema.gov/IS634/PA0102summary.htm>.

- Declaration
- Applicants' briefing
- Request for public assistance
- Kickoff meeting
- Project formulation
- Project review:
 - Small projects
 - Large projects
- Project funding
- Program closeout⁶⁰

Figure 4-2 may help explain the process visually.

Under the Trump administration as of January 2, 2018, FEMA now provides public assistance to "houses of worship," on grounds that they are community centers.⁶¹ Community centers have long been eligible for public assistance. Churches, synagogues, mosques, and other houses of worship before this change were only eligible for assistance to cover the costs they incurred in operating disaster shelters or relief sites on their grounds. The policy change that opened houses of worship (HOWs) for public assistance program coverage was applied retroactively; HOWs could apply for PA if they sustained damage in an area covered by a federal disaster declaration after August 23, 2017.⁶² This back-dating allowed HOWs damaged by 2017 hurricanes Harvey, Irma, Maria, or from other declared disasters after that date, to apply for FEMA PA. However, many conditions applied to HOWs. When HOWs were considered by FEMA to be non-critical private nonprofits, they had to first apply for a Small Business Administration (SBA) disaster loan, and if that loan was denied or if the loan obtained could not cover the full extent of repairs, the HOW could then be eligible for some amount of PA. Among other conditions, facilities owned by HOWs that were not used for worship or education, like recreation buildings, were not eligible for PA.⁶³ There has long been a church versus state controversy in federal disaster assistance, just as there has been in U.S. law. For example, religious bodies

are ineligible for FEMA reimbursement of their sheltering and relief costs during declared disasters if they proselytize to those taking refuge in the shelter. Moreover, HOWs that offer sheltering and other post-disaster aid, and that carry out FEMA sanctioned functions, must obey anti-discrimination rules when people seek refuge in their facilities during disasters or emergencies. This change in HOW policy significantly benefits HOWs in the sense that disaster damaged or destroyed HOW buildings now may be eligible for FEMA PA, despite whether or not the HOW provided disaster assistance or shelter to the community.

Private nonprofits that provide "critical services" (power, water—including water provided by an irrigation organization or facility—sewer, wastewater treatment, communications and emergency medical care) may apply directly to FEMA for a disaster grant. All other private nonprofits must first apply to the U.S. SBA for a disaster loan. If the private nonprofit is declined for an SBA loan or the loan does not cover all eligible damages, the applicant may reapply for FEMA assistance.

Public Assistance Process: As soon as practicable after the declaration, the state, assisted by FEMA, conducts the Applicants' Briefings for state, local, and private nonprofit officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed with the state within 30 days after the area is designated eligible for assistance. Following the Applicants' Briefing, a Kick-off Meeting is conducted. At that time damages are discussed, needs assessed, and a plan of action is put in place. A combined federal/state/local team proceeds with Project Formulation, which is the process of compiling and completing documents about the eligible facility, the eligible work, and the eligible cost for fixing the damages to every public or private nonprofit facility identified by state or local representatives. The team prepares a Project Worksheet (PW) for each project.

Public Assistance Projects Categories:

Emergency Work

- Category A: Debris removal
- Category B: Emergency protective measures

(Continued)

(Continued)

Permanent Work

- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other items⁶⁴

This list of categories may appear to be mundane, but for many local government officials confronting a disaster response and recovery, these categories open a path to highly generous federal funding, even when such funds come with a state and local cost share, as they normally do. In many disasters, including floods, hurricanes, earthquakes, tornadoes, and severe storms, “debris removal” tops out as a government expense category. Repairing or restoring roads, bridges, water and wastewater systems, lifeline service utilities, public buildings and offices, and so on, can run far into the millions. Those who closely examine presidential emergency declarations will discover that FEMA PA is this type of declaration’s primary form of post-disaster aid, and that under some emergency declarations not all categories of PA apply.

Small Projects: Projects falling between the maximum and minimum thresholds of Table 4-2 are considered “small.” The threshold is adjusted annually for inflation. For fiscal year 2018, the maximum small project threshold is \$125,500 and minimum is \$3,140, as Table 4-2 shows. For small projects, payment of the federal share of the estimate is made upon approval of the project, and recipients are required to notify FEMA upon completion of the project.

Large Projects: For large projects, payment is made on the basis of actual costs determined after the project is completed, although interim payments may be made as necessary. Once FEMA obligates funds to the state, further management of the assistance, including disbursement to subgrantees, is the responsibility of the state. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible

assistance and compliance with the law and regulations. Large projects must have exceeded the small project maximums of Table 4-2.

The federal share of assistance is not less than 75 percent of the eligible cost for emergency measures and permanent restoration. The grantee (usually the state) determines how the non-federal share (up to 25 percent) is split with the sub-grantees (eligible applicants).⁶⁵ The state and local cost-share is almost always predetermined in state and local law or regulation. How states and their local governments apportion the burden of the cost-share among one another is pertinent. States that cover all or most of the cost-share reduce the burden for localities covered under a presidential declaration. This encourages maximum participation by local governments as they seek to document all of their legitimate losses to both their state and FEMA. Conversely, states that cover only a small fraction of the cost-share impose a significant burden on their respective local governments. Those local governments often must absorb 15 or 20 percent of the cost share. Moreover, regardless of the size of the local cost share, localities must shoulder the substantial bureaucratic burdens of documenting PA-covered losses, must retain and oversee contractors chosen to carry out rebuilding and replacement, and then await FEMA and state reimbursement. Often, local governments are “left holding the bag” if and when various construction costs prove to be ineligible for PA coverage. When this occurs, they must absorb 100 percent of the uncovered costs.

Assistance to Individuals and Households Program⁶⁶

FEMA’s **Individuals and Households Program (IHP)** provides financial help or direct services to those who have necessary post-disaster expenses or serious needs they are unable to meet through other means. Up to the IHP maximum is available in financial help (adjusted each year), although some forms of IHP assistance have limits. Effective October 1, 2016, the maximum amount of FEMA IHP paid to any individual or household cannot exceed \$34,300.⁶⁷ By law, the maximum

TABLE 4-2 ■ Public Assistance per Capita Impact Indicator and Project Thresholds

Fiscal Year (FY)*	Statewide Indicator**	Countywide Indicator***	Small Project Minimum	Small Project Maximum
2004	\$1.11	\$2.77	\$1,000	\$54,100
2005	\$1.14	\$2.84	\$1,000	\$55,500
2006	\$1.18	\$2.94	\$1,000	\$57,500
2007	\$1.22	\$3.05	\$1,000	\$59,700
2008	\$1.24	\$3.11	\$1,000	\$60,900
2009	\$1.31	\$3.28	\$1,000	\$64,200
2010	\$1.29	\$3.23	\$1,000	\$63,200
2011	\$1.30	\$3.27	\$1,000	\$63,900
2012	\$1.35	\$3.39	\$1,000	\$66,400
2013	\$1.37	\$3.45	\$1,000	\$67,500
2014	\$1.39	\$3.50	\$1,000	\$68,500
2014*	\$1.39	\$3.50	\$3,000*	\$120,000
2015	\$1.41	\$3.56	\$3,040	\$121,600
2016	\$1.41	\$3.57	\$3,050	\$121,800
2017	\$1.43	\$3.61	\$3,100	\$123,100
2018	\$1.46	\$3.68	\$3,140	\$125,500

Source: FEMA, "Public Assistance Per Capita Impact Indicator and Project Thresholds," October 11, 2017. At <https://www.fema.gov/public-assistance-indicator-and-project-thresholds>.

Note: FY 2018 figures are for all disasters declared from Oct. 1, 2017, through Sept. 30, 2018. State and countywide indicators are adjusted each year for inflation according to the Consumer Price Index.

*Federal fiscal years run from October 1 through September 30 each year.

**The statewide indicator sets the threshold that each state, DC (treated as a state), and trust, commonwealth, or free association partner is expected to meet or exceed in per capita damage costs to be eligible for FEMA PA. The president is free to disregard the threshold when acting on a governor's request for a major disaster declaration.

*** The countywide indicator sets the threshold each county or county equivalent of a state and DC (treated as a county), or each county or county-equivalent of a trust, commonwealth, or free association partner, is expected to meet or exceed in per capita damage costs to be eligible for FEMA PA.

is increased or left unchanged each federal fiscal year based on changes in the respective year's Consumer Price Index. The following forms of help are available: Public Housing Assistance

(including temporary housing, repair, replacement, and semi-permanent or permanent housing construction) and Other Needs Assistance (including personal property and other items).⁶⁸

(Continued)

(Continued)

Individual Assistance is provided by FEMA directly to eligible individuals and families who have sustained losses due to disasters. Here are some facts about what the program offers:

- Homeowners and renters in designated counties who sustained damage to their primary homes, vehicles, and personal property under a declared disaster may apply for disaster assistance.
- Disaster assistance may include grants to help pay for temporary housing to include rental and lodging expense, emergency home repairs, uninsured and underinsured personal property losses, and medical, dental, and funeral expenses caused by the disaster, along with other serious disaster-related expenses.
- Disaster assistance grants are not taxable income and will not affect eligibility for Social Security, Medicaid, medical waiver programs, welfare assistance, Temporary Assistance for Needy Families, food stamps, Supplemental Security Income or Social Security Disability Insurance.
- Low-interest disaster loans from the SBA may be available for businesses of all sizes (including landlords), private nonprofit organizations, and homeowners and renters. Low-interest disaster loans help fund repairs or rebuilding efforts and cover the cost of replacing lost or disaster-damaged real estate and personal property. Economic injury disaster loans are available to businesses and private nonprofits to assist with working capital needs as a direct result of the disaster.⁶⁹

Housing Assistance

To be clear, housing assistance here refers to a sub-program of IHP. Also, in reviewing the information provided, remember that FEMA money cannot be used to duplicate what is paid out in claim settlements by insurers. Those with

homeowner's insurance, car insurance, and other forms of property insurance are required to file claims under those policies. Homeowner's insurance that covers a home's contents, and alternative living expenses incurred when an individual, family, or household must temporarily leave their homes, for example, cannot also be covered by FEMA. However, various expenses left unreimbursed after insurance claims are settled may be eligible for FEMA assistance of some type.

FEMA temporary housing: This is money to rent a different place to live or a temporary housing unit (when rental properties are unavailable).

Repair: This is money for homeowners to repair damage from the disaster that is not covered by insurance. The goal is to repair the home to a safe and sanitary living or functioning condition. FEMA may provide up to the IHP maximum for home repair (\$33,300 in 2018); then the homeowner may apply for an SBA disaster loan for additional repair assistance. FEMA will not pay to return a home to its condition before the disaster. In rare cases, FEMA may pay up to a maximum of \$33,300 to "replace" a totally demolished home. Flood insurance may be required if the home is in a special flood hazard area. Repair and replacement items include the following:

- Structural parts of a home (foundation, outside walls, roof)
- Windows, doors, floors, walls, ceilings, cabinetry
- Septic or sewage system
- Well or other water system
- Heating, ventilating, and air conditioning system
- Utilities (electrical, plumbing, and gas systems)
- Entrance and exit ways from the home, including privately owned access roads
- Blocking, leveling, and anchoring of a mobile home and reconnecting or resetting its sewer, water, electrical, and fuel lines and tanks⁷⁰

Replacement: Money to replace a disaster-damaged home, under rare conditions, if this can be done with limited funds. FEMA may provide up to the IHP maximum for home replacement. If the home is located in a special flood hazard area, the homeowner must comply with flood insurance purchase requirements and local flood codes and requirements. Note that under Other Needs Assistance, FEMA may cover the initial cost of the NFIP policy for the homeowner.

Semi-permanent or permanent housing construction: This is direct assistance or money for the construction of a home. This type of FEMA aid is conferred in very unusual circumstances, in locations specified by FEMA, and where no other type of housing assistance is possible. "Construction shall follow current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area. Construction will aim toward average quality, size, and capacity, taking into consideration the needs of the occupant. If the home is located in a special flood hazard area, the homeowner must comply with flood insurance purchase requirements and local flood codes and requirements."⁷¹

Other Needs Assistance

The **Other Needs Assistance (FEMA)** provision of the IHP provides grants for uninsured, disaster-related necessary expenses and serious needs. If the applicant resides in a special flood hazard area, they may be required to buy National Flood Insurance to cover their insurable items (personal property). Assistance includes the following:

- Medical and dental expenses
- Funeral and burial costs
- Repair, cleaning, or replacement of:
 - Clothing
 - Household items (room furnishings, appliances)
 - Specialized tools or protective clothing and equipment required for the applicant's job

- Necessary educational materials (computers, schoolbooks, supplies)
- Clean-up items (wet/dry vacuum, air purifier, dehumidifier) and fuel for primary heat source (heating oil, gas)
- Vehicles in need of repair or replacement due to damage by the disaster, or reimbursement of public transportation or other transportation costs
- Moving and storage expenses related to the disaster (including storage or the return of property to a pre-disaster home)
- Other necessary expenses or serious needs (e.g., towing or setup or connecting essential utilities for a housing unit not provided by FEMA)
- Cost of a National Flood Insurance Program (NFIP) group flood insurance policy to meet the flood insurance requirements⁷²

Conditions and Limitations of Individuals and Households Program Assistance

Federal disaster-related laws and policies embody rules, conditions, evidence, time limits, applicant rights and protections, and appeal rights. Cross-cutting rules set forth for other policy purposes regularly impact federal disaster assistance programs.

Non-discrimination: All forms of FEMA disaster housing assistance are available to any affected household that meets the conditions of eligibility. No federal entity or official (or their agent) may discriminate against any individual on the basis of race, color, religion, gender, age, national origin, disability, LGBTQ⁷³ status, or economic status.⁷⁴ The definition of a household now used by FEMA is highly relevant. "FEMA Individual Assistance (IA) is provided by 'household.' This is a broad term and includes everyone living in the residence at the time of the disaster. It does not refer to the nature of the relationship, therefore it is unnecessary to ask a couple if their relationship is legally recognized. Only one

(Continued)

(Continued)

person per household will complete the assistance form. The legal owner of the lost property should represent the household. All evacuees should be encouraged to reach out to FEMA for assistance."⁷⁵

Patrick Roberts claims that FEMA, particularly from 1980 into the mid-1990s, had leaders and practices that were racially discriminatory. He adds that many FEMA leaders, and hiring policies, were biased against gays and lesbians. Roberts documents that some of this discrimination was apparent in personnel and security clearance policies as well as in emergency planning and quarantine preparedness.⁷⁶

Residency status in the United States and its territories: To be considered for disaster housing assistance, applicants, or a household member, must provide proof of identity and sign a declaration stating that they are a U.S. citizen, a non-citizen national, or a qualified alien. The Disaster Housing Assistance Program (DHAP) is a joint HUD- and FEMA-administered program.⁷⁷

Notable here is that "out of status" aliens are not eligible to apply for FEMA assistance; nonetheless, they may receive in-kind help distributed by FEMA or by those working on FEMA's behalf.

Supplemental assistance: Disaster housing assistance is not intended to substitute for private recovery efforts but to complement those efforts when needed. FEMA expects minor housing damage or the need for short-term shelter to be addressed by homeowners, condo owners, renters, or tenants. Furthermore, the DHAP is not a loss indemnification program and does not ensure that applicants are returned to their pre-disaster living conditions.⁷⁸

Moreover, FEMA strongly advocates that both homeowners and tenant or civic associations purchase insurance that covers them for the hazards that may possibly befall them.

Household composition: People living together in one residence before the disaster are expected to continue to live together after the disaster. Generally, assistance is provided to the household unit in residence before the disaster. If, however, the assistance provided to the

household is not shared, or if the new residence proves to be too small or causes undue hardship, members of the household may request assistance separate from their pre-disaster household.⁷⁹

Type of assistance: Generally, more than one type of IHP assistance may be provided to the household. Only FEMA has the authority to determine which type(s) of assistance is or are most appropriate for the household.⁸⁰ FEMA also decides how long the assistance will be provided.

Proper use of assistance: All financial assistance provided by FEMA should be used as specified in writing: to rent another place to live, to make the home repairs identified by FEMA, or to replace or repair personal property. Failure to use the money as specified may result in ineligibility for additional assistance.⁸¹

This rule is difficult for FEMA to enforce, and news or social media often reveal that some of those who received FEMA money did not use it as it was intended. All money provided by FEMA is tax-free.

Documentation: Applicants are responsible for providing all documentation necessary for FEMA to evaluate eligibility. Applicants may need to provide proof of occupancy, ownership, income loss, and/or information concerning their housing prior to the disaster. Applicants should keep all receipts and records for any housing expenses incurred as a result of the disaster. This includes receipts for repair supplies, labor, and rent payments.⁸²

For disaster victims who seek FEMA assistance, documentation may be one of FEMA's most detested requirements. Victims, particularly those who have lost their homes, are often hard pressed or unable to supply FEMA with all of the documents the government requires. Sometimes the lack of a single document makes the applicant ineligible for FEMA Individual and Household Assistance. Conversely, by law FEMA must ensure that its payments are substantiated and legitimate. Disasters often tempt some people to commit fraud, deception, or misrepresentation—all at the federal government's expense. After working a disaster, FEMA is regularly

investigated by federal auditors, inspectors general, and congressional oversight committees. FEMA overpayments are “grist” for news media people. Moreover, FEMA is often excoriated when it demands that money it paid out to victims be paid back on grounds that it was inappropriately obtained or awarded by mistake.

Insurance: If applicants have insurance, any assistance provided by FEMA should be considered an advance and must be repaid to FEMA upon receipt of an insurance settlement payment. If the settlement is less than the FEMA estimated cost to make the home habitable, applicants may qualify for FEMA funds to supplement their insurance settlement—but only for repairs relating to the home’s habitability. FEMA does not provide replacement value amounts or assistance with non-essential items.⁸³

Duration of assistance: Repair and replacement assistance is provided as a one-time payment. **FEMA temporary housing assistance** (or a manufactured housing unit) is provided for an initial period of one, two, or three months. To be considered for additional assistance, applicants must demonstrate that they have spent any previous assistance from FEMA as instructed and must demonstrate their efforts to reestablish permanent housing. Additional assistance is generally provided for one, two, or three months at a time. The maximum period for IHP assistance is 18 months.⁸⁴

Appeal rights: Applicants who disagree with the FEMA determination of eligibility or the form of assistance provided have the right to appeal within 60 days of the date of the notification letter.⁸⁵

This overview of FEMA assistance programs may appear overwhelming. However, those who study U.S. disaster management should familiarize themselves with at least some of the details of these programs. First, they may be asked questions about this information by future disaster victims. Second, there is never any guarantee that researchers and students of this field will not someday need to avail themselves of the benefits offered by these programs.

Moreover, once a disaster is declared by the president, individual and household assistance

is not offered permanently. FEMA tracks the flow of applications for all IA programs under each in-force declaration. When application numbers dwindle, FEMA posts in the *Federal Register* a closeout date for the respective declaration’s IA applications. Interestingly, the closeout date applies to Individual Assistance programs and not Public Assistance (government-to-government) aid. Sometimes when a proposed closeout date is posted for IA, protests ensue and lawmakers intercede with FEMA to extend the deadline for late filers. Sometimes IA closeout dates on a declaration are extended, but they eventually reach a termination date beyond which no more applications are accepted. The Public Assistance component of many declarations faces a tougher challenge in reaching closeout. The PA projects approved under each declaration must have been fully completed with final FEMA outlays made before FEMA can close the books (closeout) on the PA portion of a declaration. Depending on the size of the projects, the number of permits required to complete them, the pace of construction, the length of time inspection of work takes, and other factors, some PA projects are not completed for a period of years. In rare cases, some massive PA projects are not closed out for a decade or more.

A final observation about FEMA’s Individual Assistance program is warranted. In those unfortunate locations that suffer back-to-back declared disasters, victims often believe that rather than request FEMA IA help for each declared incident they have endured, they can simply add the damage they suffered in the first declared event to the damage they suffered in the second declared event and then make application to FEMA. FEMA treats each declared disaster in isolation from preceding or subsequent declared disasters. In back-to-back declaration circumstances, applicants need to file for damage they sustained in the first disaster and then file separately for new damage they sustained in the second disaster. Aggregating damage costs from two disasters into one is, pun intended, a “recipe for disaster.”⁸⁶

THE PRESIDENT'S "POWER" TO DECIDE

Over most of the 20th century, natural and non-terrorism-related human-caused disasters were rarely considered matters of national security, with the notable exception of civil defense plans against nuclear attack. Owing to the September 11, 2001, terror attacks, the administration of President George W. Bush, with the assent of Congress, redefined presidential disaster declaration authority as a possible national security instrument, thus dramatically changing federal emergency management. The 9/11 disaster further centralized presidential authority, as war and several catastrophic disasters had done so before in the nation's history. Terrorism policy and disaster policy would be conjoined and in doing so presidential declaration authority would be significantly broadened.⁸⁷

The G. W. Bush administration was asked to prepare a comprehensive national response plan by those who produced the *9/11 Commission Report*.⁸⁸ With the help of Congress, the Bush administration complied.

The Homeland Security Act of 2002 (P.L. 107-296), Homeland Security Presidential Directive-5 (HSPD-5), and the Stafford Act of 1988 justify and provide, according to the former National Response Plan (NRP) and since 2008 the current National Response Framework (NRF), a comprehensive, all-hazards approach to domestic incident management.⁸⁹ Disaster declarations in the post-9/11 era are now matters of domestic incident management. All major disasters, emergencies, and catastrophic events declared by the president are considered incidents. Under the NRF, and its NRF third edition, an incident is defined as “[a]n actual or potential high-impact event that requires coordination of Federal, State, local, tribal, nongovernmental and/or private sector entities in order to save lives and minimize damage.”⁹⁰

With the exception of a few federal emergency management officials, former FEMA official George Haddow,⁹¹ and a few others, most disaster management experts did not immediately recognize that the merger of the terrorism mission and the disaster management mission would open the coffers of the Disaster Relief Fund for use by a range of federal security agencies. CRS Researcher Bruce R. Lindsay examines this issue in one of his recent reports.

Lindsay summarizes his report concerning terrorism and the Stafford Act:

The Stafford Act has been used to provide assistance in response to terrorist attacks in the past including the 1995 bombing of the Alfred P. Murrah Building in Oklahoma City, the September 11, 2001, attacks, and the 2013 Boston Marathon attack. Nevertheless, the tactics used in recent incidents such as the 2015 San Bernardino, CA, and the 2016 Orlando, FL, mass shootings, and the 2016 Ohio State University vehicular and knife attack, have brought to light two main challenges that might prevent certain types of terrorist incidents from receiving the wider assistance provided under a major disaster declaration:

- Major disaster definition lists specific incident types that are eligible for federal assistance. Past terrorist incidents were considered major disasters, in part, because they resulted in fires and explosions. Incidents without a fire or an explosion may not meet the Stafford Act of 1988 definition of a major disaster.
- Federal Emergency Management Agency's (FEMA) recommendation to the president to issue a major disaster declaration is mainly based on damage

amounts to public infrastructure compared to the state's population. Terrorist incidents with a large loss of life but limited damage to public infrastructure may not meet this criterion. Some may argue that terrorist incidents warrant the wider range of assistance provided by a major disaster declaration, and advocate for changes to the Stafford Act and FEMA policies to make all acts of terrorism eligible for major disaster assistance. Others may disagree and argue that the Stafford Act should not be altered for the following reasons:

- Regardless of cause, state and local governments should be the main source of assistance if damages are limited,
- If the incident does not qualify for major disaster assistance, it could still be eligible for limited assistance under an emergency declaration.

Advocates of changing the Stafford Act may argue that emergency declaration assistance is too limited. For example, parts of FEMA's Individual Assistance (IA) program, which provides various forms of help for families and individuals, are rarely available without a major disaster declaration. Another concern is the limited availability of SBA disaster loans under an emergency declaration. Advocates might therefore argue that changes to the Stafford Act are needed to make it easier for certain terror attacks to qualify for major disaster assistance. These include

- expanding the major disaster definition to include terror incidents that do not involve fires and explosions;
- requiring FEMA to use additional metrics when making major disaster recommendations; and/or
- extending the availability of certain IA programs and SBA disaster loans under an emergency declaration.⁹²

Lindsay's report examines many of the problems encountered in declaring "all" terrorist incidents as major disasters or emergencies. For example, the Oklahoma City Murrah Office Building bombing in 1995, and the 9/11 attacks on the World Trade Center and the Pentagon in 2001, were all acts of terrorism, and each received a major declaration or emergency declaration or both. Interestingly, for the Boston Marathon bombing of April 2013, the governor of Massachusetts asked for and received from President Obama an emergency declaration to cover certain losses in that incident.⁹³ However, in 2016, in the aftermath of the Orlando Pulse Nightclub shooting, where at least 49 were killed plus the gunman, there was a different outcome. Florida governor Rick Scott asked President Obama for a declaration of emergency and was turned down. The president, advised by FEMA officials, told Governor Scott in his letter of denial that Florida was not eligible for the emergency declaration because it had not proven in its request that the state could not recover on its own from the incident.

Many types of incidents that are unique or original, and that involve governor requests for a presidential disaster declaration of some type, are at first denied by presidents. For example, President G. W. Bush denied then-Florida governor Jeb Bush's (the president's brother's) request for an emergency declaration after an anthrax poisoning incident at American Media Inc. in Boca Raton, FL, which began only six days after the 9/11 attacks

of 2001. One person at American Media died in the incident days after he opened mail he received that contained the substance. By mid-October 2001, anthrax-laden letters began arriving in the incoming mail of two U.S. senators, a TV news correspondent, and others. The federal government spent billions screening for the substance at various key government offices in Washington, DC. Several U.S. Post Office mail processing centers were contaminated and numbers of postal workers were exposed to the substance and sickened. All told, another 5 people died and 17 were injured owing to anthrax exposure. This was investigated by the FBI as bioterror attack. An Army laboratory scientist who had worked on anthrax vaccines committed suicide, such that the FBI ended its investigation with the conclusion that this individual was the culprit.⁹⁴ The point is that the president and FEMA, working in cooperation with several other law enforcement, medical, and defense organizations, learned from this experience and now include bioterrorism on the list of potentially disaster- or emergency-declarable incidents.

Catastrophes and National Special Security Events Enter the Presidential Declaration Mix

The National Response Framework in place since 2008 includes a category of incident beyond major disaster and emergency. **Catastrophic incidents** are defined as

Any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, and national morale and/or government functions. A catastrophic event could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private sector authorities; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened.⁹⁵

The word “catastrophe” is meant to elicit several responses. It aims to impel state and local governments to plan for disasters of catastrophic magnitude and deadliness. It also may serve to pull in a wider assortment of federal agencies than have been included thus far in standard federal emergency support functions. It may also be used as a trigger to press officials at the U.S. Department of the Treasury, and who implement major provisions of the Terrorism Risk Insurance Act (TRIA) of 2002, to certify that an act of terror has indeed occurred and that federal support to the private insurance and reinsurance industry will be made available under rules of the program.⁹⁶ Moreover, the Post-Katrina Emergency Management Reform Act (P.L. 109-295) offers a definition of catastrophic incident, but does not create catastrophic incident declaration authority. This may be a moot point since the president can use, and has in the past used, his Stafford Act major disaster declaration authority to address disasters meeting much of the definition of catastrophe.

National Special Security Events (NSSEs)

National Special Security Events (NSSEs) are in some respects under the umbrella of presidential declaration authority, although largely outside Stafford Act authority. On May 22, 1998, President William J. Clinton issued Presidential Decision Directive 62

(PDD 62)—Protection Against Unconventional Threats to the Homeland and Americans Overseas. PDD 62 established a framework for federal department and agency counterterrorism programs, which addressed terrorist apprehension and prosecution, increased transportation security, enhanced emergency response, and promoted cybersecurity. PDD 62 also designated specific federal departments and agencies as the lead agencies in the event of terrorist attacks. The U.S. Secret Service (USSS), part of the Department of Homeland Security since 2003, was designated as the lead agency in the planning, implementation, and coordination of operational security for events of national significance—as designated by the president. Other lead agencies for counterterrorism activities included the Federal Emergency Management Agency, the Department of Defense, and the Department of Health and Human Services.⁹⁷

On December 19, 2000, Congress enacted P.L. 106-544, the Presidential Threat Protection Act of 2000, and authorized the USSS—when directed by the president—to plan, coordinate, and implement security operations at special events of national significance. The special events were designated National Special Security Events (NSSEs). Some events categorized as NSSEs include the following: presidential inaugurations, major international summits held in the United States, major sporting events, and presidential nominating conventions.⁹⁸

NSSEs include “high-profile, large-scale events that present high probability targets” such as various summit meetings of world leaders inside the United States, the Republican and Democratic national political party conventions, inaugurations, and any other event the president believes may be vulnerable to terror attack. The U.S. Department of Homeland Security uses NSSEs to cover any potential target for terrorism or other criminal activity. These events have included meetings of international organizations. NSSE designation requires federal agencies to provide full cooperation and support to ensure the safety and security of those participating in or otherwise attending the event, and the community within which the event takes place, and is typically limited to specific event sites for a specified time frame. An NSSE puts the USSS in charge of event security; the Federal Bureau of Investigation (FBI) in charge of intelligence, counterterrorism, hostage rescue, and investigation of incidents of terrorism or other major criminal activities associated with the NSSE; and FEMA in charge of recovery management in the aftermath of terrorist or other major criminal incidents, natural disasters, or other catastrophic events.⁹⁹

Prior to the establishment of DHS in January 2003, the president determined which events would warrant NSSE designation. Since the establishment of the department, the DHS secretary—as the president’s representative—has had the responsibility to designate NSSEs. NSSE designation factors include the following: anticipated attendance by U.S. officials and foreign dignitaries; size of the event; and significance of the event.

The secretary of DHS manages an NSSE grant program that provides reimbursement of eligible costs of organizations engaged in preparing and implementing an NSSE.¹⁰⁰ Even though NSSEs have been designated since 1998, Congress has only appropriated funding for a general NSSE fund since FY 2006. Since about 2000, presidents have used their authority to issue emergency declarations to cover NSSEs, thus tapping the Disaster Relief Fund rather than the USSS’s modestly funded NSSE program budget.¹⁰¹ Many may be surprised to learn that President G. W. Bush issued an emergency declaration to

cover Barack Obama's inauguration in January 2009 and that President Obama issued one to cover Donald Trump's January 2017 inauguration. Also, the annual NFL Super Bowl routinely garners NSSE coverage.

The Significance of Post-9/11 Changes

Why are these post-9/11 changes important? Presidents now possess almost unencumbered authority to mobilize federal, state, and local resources if they conclude that an event of some kind represents either a terrorism threat or an assumed act of terrorism. When a terrorist event occurs, the NRF draws federal, state, and local agencies together to work under the National Incident Management System (NIMS). In addition, the Homeland Security Act of 2002, related laws, and a series of homeland security presidential directives created changes in FEMA and the domestic and international world of emergency management.

Because the president and DHS-FEMA officials define so many major disasters and emergencies of any type or cause as incidents of national importance, emergency management is today very much interwoven with national security at home and abroad. U.S. emergency managers on every level of government must now learn more about disasters and emergencies, especially those involving terrorism, that occur outside, as well as inside, the United States.¹⁰²

TELL ME MORE 4-1

ANOMALOUS PROBLEMS INVITE NEW DECLARATION PRECEDENTS

Occasionally, certain anomalous events invite presidents to use the discretion they have in disaster declaration authority to issue declarations for unprecedented phenomena. An example is the presidential response to Cuban president Fidel Castro's Mariel boatlift of Cuban evacuees to the United States in 1980. President Jimmy Carter issued an emergency declaration to reimburse Florida for the costs incurred in working with Cuban refugees from the boatlift.¹⁰³ This action handed FEMA a unique management task that had to be performed in cooperation with various federal and state agencies, most particularly corrections agencies, which were assigned the job of separating convicted criminals from the pool of refugees.

Sometimes presidents single-handedly, or in conjunction with Congress, transform or expand what officially constitutes a disaster.

In 1979, President Carter issued a controversial presidential declaration of a major disaster covering the Love Canal hazardous waste incident in a neighborhood of Niagara Falls, New York. This action was one of the first to engage FEMA in buying out contaminated or endangered homes in the interest of public safety. The FEMA **buyout program** for houses and other properties became more common in future years, particularly for structures subject to recurring flood loss or from hazardous substance threats prohibitively expensive or technologically infeasible to correct.

In 1999, President Clinton's decision to approve New York governor George Pataki's West Nile virus emergency request (to cover pesticide spraying and public health costs) created a new category of federal emergency aid. Some analysts allege that federal activity in support

of West Nile virus spraying was a precursor of modern anti-pandemic or bioterrorism federal preparedness initiatives.¹⁰⁴ These decisions set precedents that led governors to conclude that they could ask for presidential declarations to cover similar problems and calamities.

On February 1, 2003, the space shuttle *Columbia* disintegrated in the atmosphere upon reentry from space, killing its seven astronauts and scattering debris across several southwestern states. President George W. Bush exercised his disaster declaration authority and invited

governors of the states engaged in searching for the remains of the astronauts and parts of the shuttle to request 100 percent federally funded emergency declarations that would reimburse their respective states and localities for the costs of searching for, protecting, and returning to the National Aeronautics and Space Administration (NASA) all physical and material remains. Texas, where most of the debris was eventually located, and Louisiana both applied for and received emergency declarations (EM 1371 and 1372, respectively) from the president for this purpose.

Federal emergency management is predicated on terrorism as a paramount threat, whereas other types of disasters or emergencies occupy diminished positions within the federal emergency management and homeland security community.¹⁰⁵ Until the mid-1980s, when concerns about terrorism arose within the Reagan administration, natural and non-war human-caused disasters have rarely been considered matters of national security.¹⁰⁶

Owing to the president's and federal government's problems in the 2005 Hurricane Katrina catastrophe, presidents facing potential mega-disasters may be tempted to federalize the government's response to certain disasters under presidential declarations of "catastrophic disaster." However, the Stafford Act of 1988 and its amendments in subsequent measures remain law, and the process by which the president and DHS-FEMA consider gubernatorial requests for declarations of major disaster and emergency and the nature of what constitutes a disaster agent have been only slightly altered owing to terrorism concerns. Most of these changes reflect a shift toward homeland security and defense. This has produced some negative ramifications at the state and local levels. See Chapter 7.

THE "POLITICS" OF PRESIDENTIAL DECLARATIONS

Sometimes disasters, particularly those that are catastrophic in magnitude, profoundly affect presidents and their administrations. Hurricane Camille (1969), and an ensuing weak and highly criticized federal response to that disaster, impelled President Nixon to assign various emergency management duties to an archipelago of federal agencies. By furnishing a wide variety of federal departments and agencies small pieces of disaster management jurisdiction, Nixon hoped to broaden the congressional base of political support for disaster assistance in general. The federal-state debacle in managing the response in Florida to Hurricane Andrew in 1992 damaged President George H. W. Bush's image, and although he narrowly won the state's electoral votes in 1988, it may have contributed to his defeat in the November 1992 presidential election. Once in office,

President Clinton responded to the Hurricane Andrew failure by appointing a qualified and experienced state emergency manager to head his FEMA. In spite of controversial problems in some realms of his administration, Bill Clinton left office perceived as a president capable of managing domestic disasters, although perhaps less so terrorism. The terrorist attack disaster of September 11, 2001, moved President George W. Bush to quickly redefine his administration's primary mission as one of countering terrorism. Hurricane Katrina and the excoriated federal response to that disaster chastened President G. W. Bush and moved Congress to reconstitute FEMA as a full-service emergency management agency but one still embedded within the gigantic DHS. President Barack Obama confronted massively destructive Superstorm Sandy in November 2013, which generated major disaster declarations for twelve mid-Atlantic and northeastern states and caused property losses rivaling those of Hurricane Katrina in 2005.¹⁰⁷ In the spring of 2011, President Obama responded to a tornado outbreak and severe weather with seven major disaster declarations for southern states—Alabama hit the hardest with nearly three quarters of a billion dollars in damage, some for the deadly Tuscaloosa tornado.¹⁰⁸ President Trump, in office only some six months, had to confront three successive massively destructive hurricanes: Harvey in the greater Houston area of Texas, Irma along a south-to-north line of peninsular Florida, and Maria, which carved a path of mass destruction across the heart of the island of Puerto Rico and seriously impacted the American Virgin Islands (see Chapter 9).

Disaster policy and politics are very much **event driven**.¹⁰⁹ Politics permeate the realm of disaster and emergency; in nations that embrace democracy, politics and disasters have an ambivalent relationship that is very much time-related. Overtly political behavior in the immediate aftermath of a disaster is not only bad politics but self-defeating politics. However, disasters during campaign seasons usually benefit incumbents and hurt challengers. Disasters tend to suspend political campaigns and partisan competition. However, as time passes elected executive officials who are astute politically need to prove their mettle. They need to act and they need to know how to resolve problems that their disaster managers bring them. If the response and recovery seem to be moving forward satisfactorily, elected executives, including presidents, need to know when it is appropriate to visit a disaster site and its victims. It is only natural that elected executives claim political credit for well-managed emergencies and crises. However, whether deserved or otherwise, a disaster response judged to have been bungled or too slow will rebound poorly for elected executive officeholders.

There is a tendency among policymakers to be influenced by, if not fixated upon, the latest memorable disaster or catastrophe. Certain disasters or catastrophes not only stress the nation's disaster management system but force massive reforms that produce a **new normal** in the domain of disaster policy and homeland security.¹¹⁰ FEMA, whether independent or within DHS, is fairly good at managing "routine" disasters.¹¹¹ However, no single federal agency is invested with sufficient authority to adequately or proficiently cope with a catastrophe. It becomes the job of the president and his staff to orchestrate and oversee the work of many federal disaster agencies in catastrophic circumstances. Such work has to be carried out with the help and cooperation of governors, mayors, and other elected executives. A host of other players are involved as well, and these include state and local emergency managers, emergency responders, nonprofit organizations active in disasters, and private corporations, large and small.¹¹² This type of work is

TELL ME MORE 4-2

PRESIDENTS, NEWS, AND PUBLIC RELATIONS

Over the past 30 or more years, presidents have taken a greater interest in disasters, particularly major ones. Disasters have become targets of camcorder politics in which political officials seek opportunities to be filmed at disaster sites to exhibit compassion and at the same time demonstrate responsiveness to the public, actions that may yield them political benefits.¹¹³ In 1980, President Carter issued a presidential disaster declaration in *Air Force One* while flying over the volcanic eruption of Mount St. Helens in Washington State. President Reagan was once photographed shoveling sand into a gunnysack on the banks of a flooding Mississippi River after issuing a presidential declaration of major disaster. President George H. W. Bush was filmed commiserating with victims of the Loma Prieta earthquake in a heavily damaged San Francisco neighborhood, weeks after having issued a declaration for the quake. Television cameras showed President Clinton at shelters and inspecting freeway damage in the days after he issued a declaration for the Northridge earthquake. Similarly, President George W. Bush visited the Pentagon and the World Trade Center “ground zero” in the days after the 9/11 terrorist attacks to exhibit compassion, concern, and resolve to prevent future attacks. He did likewise after Hurricane Katrina in September 2005 when he visited Louisiana and toured flood-damaged areas inside New Orleans. In late May 2013, President Obama personally toured the Enhanced Fujita Scale 5 tornado damage zone in Moore, Oklahoma, where 14 adults and 10 children perished and where an estimated 1,200 homes and 2 elementary schools were destroyed, to commiserate with affected families and individuals and to offer reassurance of ongoing federal relief aid.¹¹⁴ Both President Trump and First Lady Melania Trump visited flood-ravaged Houston neighborhoods after Hurricane Harvey in early September 2017.¹¹⁵ Today, Americans expect their president both to dispatch federal disaster help and to personally visit damaged areas. It

is now customary for most of the president’s cabinet, especially officials heading disaster-relevant departments, to visit major disaster sites.¹¹⁶ Such visits and “photo ops” are an intrinsic part of modern presidential crisis management.

How presidents manage disasters and how responsive they are perceived to be to the needs of victims have far-ranging political and electoral consequences, which underline the importance of the role of the head of FEMA. How well the FEMA leadership manages the agency’s response to disaster is of great political importance to the president and his staff.¹¹⁷

The Clinton administration appreciated the role of the news media in covering disasters. Both President Clinton and FEMA director James Lee Witt emphasized post-disaster public relations, in part because they believed the president’s public image was at stake in disaster circumstances. The public requires reassurance that a president is doing all he can to help disaster victims. The need for the president to provide reassurance, backed by action, was underscored after Hurricane Katrina. Not only was President G. W. Bush perceived to have performed poorly in managing the early stages of the disaster, but he went on national television to apologize for his own behavior and for the failures of the government’s disaster response. Again, there were political consequences. Heavy Republican losses in House and Senate races in the midterm elections of November 2006 were attributed to public dissatisfaction with the war in Iraq and with the Bush administration’s poor performance in the Katrina catastrophe as well. Superstorm Sandy, which struck only days before the 2012 presidential election, may have affected some election outcomes in and around damage zones of New York, Long Island, and coastal areas of New Jersey.

How the FEMA director and staff manage the federal response, and how they portray this effort to the media, shapes public opinion of both the

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presidency and the agency. Major disasters customarily, but not always, pull the nation together, encourage a centralization of authority, and often improve the president's approval ratings in public opinion polls.¹¹⁸ Such activity promotes public

awareness of the disaster across the state, nation, and world. It underscores the legitimacy of the government's response and of the presidency, and it may convey a greater sense of urgency to responders and to those considering the offer of help.

expected under the National Preparedness Plan, the NRF, and recently under the "five suites" frameworks: mitigation, preparedness, prevention, response, and recovery.

White House officials tend to keep their office televisions tuned to CNN, Fox News, MSNBC, or BBC World News, among others, all day long so as not to miss breaking news that may come to involve the president or that may require the president's attention or action. Often breaking news about disasters, emergencies, or other calamitous events gets priority attention in the White House and in the Oval Office.

The Domestic Policy Council and Office of Cabinet Liaison would most likely help the president address various emergency or disaster management activities. Within the White House staff, schedulers, speechwriters, and travel planners would also join in this effort, especially if the president were to make arrangements to visit the disaster area. Secret Service officials, military liaison, and medical personnel may also play roles, as would the Office of the Vice President.¹¹⁹

The Secretary, Department of Homeland Security

The DHS secretary is a member of the president's cabinet. The Homeland Security Act of 2002 authorized creation of DHS, a super department opening with some 180,000 employees.¹²⁰ It was formed by transferring some 22 federal agencies or offices into the new department. The DHS secretary and deputy secretary are managerial supervisors of the FEMA administrator. The DHS secretary has authority to consult with the FEMA administrator and may be shown the White House Package containing a governor's declaration request and other information compiled by FEMA, the respective state, and its localities. In the past, researchers perusing presidential libraries have documented that a list of congressional districts impacted by the incident accompanies (or is part of) the White House package. Presidents are routinely made aware of the U.S. senators and U.S. representatives whose constituents have been impacted by the incident.

Today, when health and safety are threatened, and a disaster is imminent but not yet declared, the secretary of the DHS may position department employees and supplies before the event. DHS monitors the status of the circumstances, communicates with state emergency officials on potential assistance requirements, deploys teams and resources to maximize the speed and effectiveness of the anticipated federal response, and, when necessary, performs preparedness and PDA activities.¹²¹

In the aftermath of a catastrophic event, the Department of Homeland Security turns to its Surge Capacity Force, a cadre of federal employees who are limited service volunteers that help affected communities by supporting the Federal Emergency Management Agency's urgent response and recovery efforts. The Surge Capacity Force is made up of volunteer federal employees from within DHS outside of FEMA and from almost every federal

department or agency that sends volunteers. In the immediate aftermath of Hurricanes Harvey, Irma, and Maria, Acting Secretary of Homeland Security Elaine Duke activated the Surge Capacity Force. DHS has deployed many Surge Capacity Force volunteers from throughout the federal government to support disaster survivors in Texas, Florida, Puerto Rico, and the U.S. Virgin Islands.¹²² The Surge Capacity Force is a new initiative. It is functionally worthwhile and it builds a positive public image of both DHS and FEMA

The Role of Congress

Congress as an institution and congressional lawmakers themselves enter into the politics and policy of disasters in myriad ways. When a disaster or emergency is threatened or is imminent, lawmakers representing jurisdictions in the threatened zone often press the president to mobilize federal help or issue a declaration of emergency. Presidents considering a disaster declaration request submitted by a governor receive, as a matter of routine, a list of the names of the lawmakers whose districts are affected by a disaster event.¹²³

Senators and representatives often petition the president as an entire state delegation to confer a declaration. Moreover, lawmakers frequently contact the White House about matters of disaster or emergency. Sometimes individual legislators seek audiences with the president or with White House staff to press for federal help.

FEMA has many overseers within Congress. Before FEMA was folded into the DHS, it had a wide variety of House and Senate committees and subcommittees with jurisdiction over its programs in whole or in part. Since FEMA entered the DHS, Congress has reorganized these committees such that there is now a House Committee on Homeland Security. Moreover, the former Senate Governmental Affairs Committee elected to expand its title to become the Committee on Homeland Security and Governmental Affairs. However, many of the federal agencies folded into DHS retain their traditional jurisdiction and so retain their original House and Senate committee and subcommittee overseers, the majority of which are not also members of the House or Senate homeland security committees. This significantly complicates management of DHS units and risks muddled congressional oversight.¹²⁴

On top of this, some researchers allege that presidential and congressional political considerations affect “the rate of disaster declaration” conferral and the allocation of FEMA disaster expenditures across states.¹²⁵ A few researchers have shown that states politically important to the president have higher rates of disaster declaration request approvals than other states. They have also claimed that federal disaster relief expenditures are larger in states having congressional representation on FEMA oversight committees than in states unrepresented on FEMA oversight committees. Remarkably, one pair of political economists posited a **congressional dominance model**, which predicts that nearly half of all disaster relief is motivated politically rather than by need.¹²⁶ The same researchers assert that there is a possibility that political influence may affect the outcome of gubernatorial requests for presidential disaster declarations at two distinct stages: during the initial decision to declare a disaster or not and in the decision of how much money to allocate for the disaster.¹²⁷ Here they assume that bureaus, like FEMA, follow congressional preferences and that the responsible congressional committees, FEMA jurisdictional overseers, make sure that they do so. Here legislators are assumed to behave as wealth maximizers seeking to direct federal resources to their home states or districts.¹²⁸

There are other researchers who insist that differences in major disaster declaration approval rates between presidential and non-presidential election years is slight and statistically insignificant. Sylves and Buzas quantitatively calculate that approval rates for major disaster (DR) and emergency (EM) requests only show slight upturns in the months before an incumbent president seeks re-election, and then only in battleground states of high electoral vote value.¹²⁹ Lindsay shows that from 1974 to 2016, turndowns in non-presidential election years average 16.0 per year, which is an average 25.3 percent of all DR and EM requests. In the same interval, for presidential election years, Lindsay shows that turndowns drop to 14.5 per year, which is 25.3 percent of all DR and EM requests.¹³⁰ These small differences may not be significant enough for one to draw political inferences. Whenever the president-governor nexus is considered, one must keep in mind that governors have their own motives, just as presidents do. It may well be that governors of battleground states, in presidential election years when an incumbent president seeks re-election, exploit these circumstances by asking presidents to approve declarations for incidents on the cusp of approvability.

However, the political geography of declaration issuance demonstrates that the alleged FEMA effort to “reward legislators” (Reeve’s congressional dominance model) who serve on the agency’s authorizations or appropriations oversight committees is both far-fetched and arguable. This is because the ultimate decision to approve or reject a governor’s request for a declaration is made by the president, not by FEMA officials. In effect, FEMA officials have little leeway in matters of presidential declaration decision making.

FEMA heads assisted by their staffs (and region offices) have considered the worthiness of a governor’s request in accord with estimated losses and with FEMA’s thresholds of loss at the state and county levels. Since 2002, the administrator, in consultation with the DHS secretary, provides the president with FEMA’s official recommendation regarding whether the president should approve or reject the governor’s declaration request. It is highly unlikely, although difficult to prove, that any FEMA leader would engage in strategic behavior, aimed at placating the desires of lawmakers on FEMA oversight committees, by endorsing unworthy or undeserving requests for presidential approval. It is difficult to prove this because the FEMA director’s memorandum to the president is a matter of executive privilege (discussed previously) and so is not open to public scrutiny.

In theory, presidents, on their own, may use their declaration discretion to reward states that are the political homes of key House and Senate legislators and to advance electoral strategies beneficial to themselves, to their fellow party members on Capitol Hill, and to other political actors they judge to be important, including the requesting governors themselves.¹³¹ Presidents could use their declaration power to punish or reward governors, and in rare cases legislators, who support or oppose their policies. They may also want to “simply tarnish the image of opposing party governors or legislators in hopes of reducing their probability of reelection.”¹³² However, these claims are speculation. Any president’s exercise of reward or punishment behavior in the aftermath of major or minor disasters is likely to be evident in how a president, and the White House, choose to use publicity, photo opportunities, and public relations in their dealings with elected officials from states and districts impacted by the event. It is not likely to be evident in their decision to approve or reject a governor’s declaration request.¹³³

Soon after opening in 1979, FEMA developed a general set of criteria by which the president may judge gubernatorial requests for declarations of major disasters or

TELL ME MORE 4-3

VAGUE CRITERIA AND POLITICAL SUBJECTIVITY

For many years, the process and criteria of disaster declaration has been purposely subjective to allow the president discretion to address a wide range of events and circumstances. Beyond the annual statewide and county per capita damage thresholds set by FEMA to advise the president, governors and their state disaster officials have little to guide them in estimating whether to go ahead with a request for presidential declaration of major disaster or emergency. They have little basis for concluding in advance whether their petition for a presidential declaration will be approved or denied.

However, as long as a governor or other state officials know that the state can afford to shoulder the 25 percent share of the 75 percent/25 percent federal aid formula contained in a presidential disaster declaration, they have an incentive to request a federal declaration. State officials have an incentive to “cry poor” in petitioning for federal help, minimizing their own capacity and capability to address disaster.

Some argue for reducing presidential discretion in the review of governors’ requests for disaster declarations and often point to the disaster declaration systems used by Canada and Australia. Canadian provinces and Australian states and territories rely less upon federal assistance during disasters than do U.S. states. In Canada and Australia (nations with federal systems), “there is no requirement for an explicit disaster declaration” by the prime minister, and “the decision to authorize federal reimbursement is essentially automatic.”¹³⁴ Canadian provinces and Australian states and territories must pay out sums in disaster relief that exceed certain deductible levels before they qualify for their respective nation’s federal assistance. It should be noted that the provinces, states, and territories of these two nations are expected to shoulder the brunt of disaster management and relief duties, in service to their local governments.¹³⁵

Some recommend making declaration judgments more of an administrative determination under which states would have to experience preset thresholds of damage to qualify; states would be expected to pay an upfront deductible sum of money and pay a much larger share of the total cost than the 25 percent that is now the state share in the United States.

Such proposals are interesting, but they tend to overlook the fact that American states come in all population and land-area sizes. Some states cover immensely large tracts of land but contain few people (Alaska, Montana, New Mexico, Nevada, North Dakota, Utah, Wyoming, etc.); some have small populations and small land area (Delaware, New Hampshire, Rhode Island, Vermont). Moreover, there are heavily populated states that also cover massive land areas (California, Texas, etc.).

The issue here is that American demographics make it difficult if not arbitrary to impose disaster deductibles on states and territories. American disaster declaration history shows that presidential discretion may take the degree of human suffering into account even if losses are light and damage is confined to a small area. There are many examples of a presidential disaster declaration issued to a single county in a single state, the most notable perhaps being the declaration that went to New York State and New York City after the first World Trade Center bombing in 1993.¹³⁶

Americans would be expected to oppose the idea of disaster deductibles for their states for a variety of reasons. First, using deductibles as thresholds for issuing federal declarations limits presidential flexibility to address disasters and emergencies. Second, it makes deservedness depend on loss accounting rather than on other indicators of need. Third, Americans, unlike a few of their elected representatives, probably do not generally perceive presidential disaster declaration

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spending as redistribution of taxpayer monies from one state to another. Few would conceive of federal disaster spending as a zero-sum game in which one part of the nation gains unfairly at the expense of another part of the nation. Fourth, the massive economic integration of the nation and the pervasiveness of global trade and economic transactions create a national interdependence. A small disaster in Florida may have significant economic consequences for interests in California, Massachusetts, Michigan, or Texas.

Some may find it ironic that giant European reinsurance companies worry deeply about hurricanes threatening strikes along the U.S. Gulf or Atlantic coasts. A major earthquake in California could easily, albeit temporarily, wipe out the liquidity of American auto insurance firms, protracting the claim settlement of a fender bender

in Massachusetts. Some disasters affect entire regions of the United States, and it would be foolish to discriminate between states in a massive damage zone on the basis of a deductible payment system of loss.

Many emergency declarations, more than major disaster declarations, are likely to stretch the rule that states must lack the capacity to recover on their own to qualify for a presidential declaration. In times of tight state and local budgets, or when they are in deficit, an emergency offers governors a flexible path for securing federal help. FEMA records disclose that snowstorms, windstorms, minor flooding, and drought are the most common types of emergency declarations. Emergency requests, even more than for major disaster requests, allow politically subjective determinations to come into play.

emergencies. However, the president is not legally bound to use or follow those criteria. A governor's request for disaster or emergency relief is not necessarily granted. As mentioned, presidents can issue a **turndown**. A turndown is the action authorized by the president and signed by the director of FEMA that denies a governor's request for a major disaster or emergency declaration. Every president from Truman to Trump has turned down some requests for declarations (see Table 4-3). Presidents are as free to turn down emergency declaration requests as they are to turn down requests for presidential declarations of major disaster. Declarations, even if approved, may embody denial of certain kinds of assistance and may deny inclusion of certain areas. In other words, declarations stipulate approval and disapproval of certain requested program assistance.

In addition, sometimes presidents approve governors' requests submitted as emergencies but then go on to declare the events major disasters later. Presidents do not need a second gubernatorial request to elevate an emergency to a major disaster. The decision may flow logically from official recognition that the emergency phase of lifesaving and property protection is at an end and a major disaster declaration is needed to mobilize the additional federal agencies, spending, and resources necessary in disaster recovery.

Remember, governors may request that certain localities (usually counties or the state's equivalent of counties) be added to a presidential declaration already in force.¹³⁷ Since 1988, the federal coordinating officer (FCO) assigned to respond to the disaster, not the president, has possessed the authority to add counties to a presidential declaration of major disaster.¹³⁸ If the president denies a governor's request for a declaration, that governor has the right to appeal. In rare instances, a governor may win a declaration on appeal. Figure 4-3 provides a bar chart of major disaster declaration issuance by year from 1953 to 2014.

TABLE 4-3 ■ Presidential Approvals and Turndowns of Governor Requests for Disaster Declarations, May 1953 through December 2017

President	Time Span	Approvals			Turndowns			Turndown Percentage		
		Major ^a	Emerg ^b	Total	Major ^c	Emerg ^d	Total	Major	Emerg	Total
Eisenhower	5/2/53–1/21/61	106	0	106	55	0	55	34%	0%	34%
Kennedy	1/21/61–11/20/63	52	0	52	22	0	22	30%	0%	30%
Johnson	11/23/63–1/21/69	93	0	93	49	0	49	53%	0%	53%
Nixon	1/21/69–8/5/74	195	1	196	102	15	117	52%	94%	37%
Ford	8/5/74–1/21/77	76	23	99	35	7	42	32%	23%	30%
Carter	1/21/77–1/21/81	112	59	171	91	37	128	45%	39%	43%
Reagan	1/21/81–1/21/89	184	9	193	96	16	112	34%	64%	37%
G. H. W. Bush	1/21/89–1/21/93	158	2	160	43	3	46	21%	60%	22%
Clinton	1/21/93–1/21/01	380	68	448	103	13	116	21%	16%	21%
G. W. Bush	1/21/01–1/21/09	458	140	598	89	28	117	16.3	16.6%	16.4%
Obama	1/21/09–1/20/17	476	79	555	96*	12*	108*	16.7*	13.1*	16.2*
Trump	1/20/17–11/20/17	54	15	69	8*	N/A	N/A	N/A	N/A	N/A
Total		2344	396	2740	789	131	920	25.2%	24.9%	27.4%

Sources: (a) and (b) FEMA, Declaration Information System (DARIS), June 1997, and Federal Emergency Management Information System (FEMIS), December 2001, Department of Homeland Security, Emergency Preparedness and Response Directorate; FEMA, DFRS Obligations Summary—Grouped by Event and Year, Reporting Cycle through January 2013, Automated DFRS Report Export to Excel, database compiled by Bruce Friedman, Manager CFO-FST and (c) and (d) DHS Justification of Estimates fiscal year 04, March 2003; 9/11/01–9/22/05 turndown data: Sen. Thomas R. Carper, D-DE, to author. FEMA, Turndowns of Major Disaster and Emergency Governor Requests through December 2011, compiled by Dean Webster, February 14, 2012.

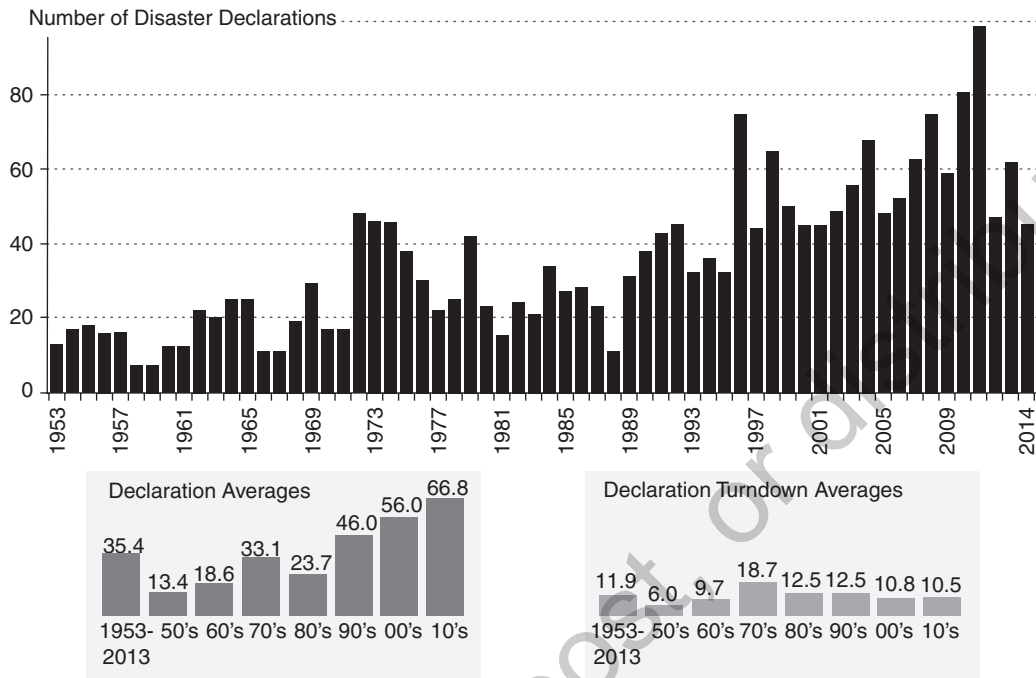
Note: Date of declaration checked for each administration to the day. Remember, turndown percentage is the number of turndowns as a percentage of total requests for the respective category, such that turndown requests and approval requests are summed in the calculation denominator. * Please note that in this table, President Obama's turndown data on major disaster requests begins January 21, 2009 and continues to December 11, 2011, has a gap of some four months, starts again on March 7, 2012, and ends January 20, 2017. An even larger gap appears in Obama's emergency declaration turndowns (from 11/3/2011 to 2/17/2014). There may have been turndowns in the two gap periods of Obama's Major Disaster and Emergency Totals. President Trump's turndown data was only available for the period January 20, 2017 (when he was inaugurated) to August 22, 2017, and it included only requests denied on major disaster declarations, not on emergency declarations. Also, President Trump's emergency declarations end August 22, 2017. Owing to gaps in both the Obama and Trump data, turndown percentages are listed as not available (N/A). Turndown data is nearly impossible to obtain even using the Freedom of Information Act. Turndowns are sometimes the subjects of newspaper articles but searches on this are difficult in the extreme.

a. Represents approved presidential declarations of major disasters, which began in 1953.

b. Represents approved presidential declarations of emergencies. Emergency declarations began in 1974.

c. Represents president's turndown of a governor's request for a presidential declaration of major disaster.

d. Represents president's turndown of a governor's request for a presidential declaration of emergency.

FIGURE 4-3 ■ Major Disaster Declarations from 1953 to 2014

Source: Bruce R. Lindsay and Francis X. McCarthy, "Stafford Act Declarations 1953–2014: Trends, Analyses, and Implications for Congress," Congressional Research Service, p. 8, July 14, 2015, <https://fas.org/sgp/crs/homesecc/R42702.pdf> [accessed July 9, 2018].

According to Table 4-3, there has been a significant increase in the number of major disaster declarations issued since 1988, the final year of the Reagan administration. Over the 1990s, 2000s, and 2010s, the decadal averages, 46.0, 56.0 and 66.8, respectively, have exceeded the 35.4 average for the interval 1953 to 2013. Figure 4-3 shows that while total majors issued and decadal averages for majors issued have both increased since the 1980s, the decadal averaged for turndowns over the 2000s and 2010s drops slightly below the annual average of turndowns from 1953 to 2013. In effect, regardless of who has served as president since 1988, more major disaster declarations are being issued (with fluctuation), the decadal average number of majors has ramped up, and rates of governor request turndowns by each president has been flat or declining.

"PAYING" FOR PRESIDENTIAL DISASTER DECLARATIONS

Lawmakers are key players when it comes to furnishing federal money for disaster relief. The president's Disaster Relief Fund is the chief repository of funding authority to pay the federal share of disaster costs. It was administered by independent FEMA (April 1979–March 2003)

and has been administered by DHS-FEMA since 2003. The DRF is replenished by “no-year” appropriations monies. *No year* simply means that there is no time limit attached to the spending authority of an appropriation law. The fund carries over unspent budget authority from previous disasters and receives an annual congressional appropriation, but it is often insufficient to cover federal payouts for declared disasters and emergencies during the federal fiscal year. Congress has the power to approve emergency supplemental appropriations to recapitalize the fund. Congress endeavors to never let the Disaster Relief Fund exhaust its spending authority. Even if the fund’s budget authority was exhausted, presidents are legally permitted to borrow money from the Treasury to continue to pay federal expenses for ongoing declared major disasters and emergencies.¹³⁹

In previous decades, the tendency was for each administration to ask for the maximum emergency supplemental appropriation they thought necessary. They reasoned that it is always better to estimate high rather than low, as no administration wants to have to return to Congress to seek an additional emergency supplemental for the same disaster (although this sometimes happens). Because these appropriations come with no spending expiration date, and because the disasters they are aimed at often end up costing the federal government less than the total spending authority conferred, spending authority in the fund often accumulates and so pays for other, smaller disasters and emergencies. However, great disasters or catastrophes on rare occasions swallow up all of the fund’s spending authority. It is then that Congress goes to work on emergency supplemental appropriations.

In recent years, policymakers have changed tactics. Today the tendency is to request smaller amounts for the DRF through submitting a series of supplemental appropriations. This better protects the money from rescissions (laws that terminate budget authority) and transfers (which move appropriated amounts from one account to another). Also, since 9/11, when Congress changed budgeting rules in the wake of that disaster, the DRF has been regularly replenished and generally amply funded.¹⁴⁰

The politics of congressional enactment of emergency supplemental appropriations often makes it obvious why Congress should continue to entrust the president with the bulk of routine declaration authority. **Emergency supplementals** must, like all legislation to be enacted into law, pass both the House and Senate. Whether or not an emergency supplemental is open to “riders” (non-germane legislation attached to a bill) in either body is often both controversial and consequential. Individual lawmakers often add riders to emergency supplementals that could never win majority support were they not attached to these “must pass” emergency supplementals for disasters.

Presidents have come to detest emergency supplementals because those measures often come to the Oval Office laden with riders that confer pork barrel or special interest benefits they would never otherwise approve were these not part of a “must pass” bill. As the president has no line-item veto to remove what he judges to be undeserved riders, he is more or less compelled to sign the emergency supplementals into law or otherwise be judged heartless and unresponsive to the needs of disaster victims who are awaiting the federal help the supplemental will provide. Emergency supplementals pose other problems. They often drive up the federal deficit and so may damage fiscal policy, potentially harming the health of the national economy. The legislative process is often slow and cumbersome, even if riders are not permitted on the emergency supplemental.

Some lawmakers, Democrats and Republicans, have come to view emergency supplementals for disaster as a form of **redistributive politics** in which a zero-sum game applies. One part of the nation gains at the expense of another part of the nation. Some

have alleged that states with large congressional delegations that frequently experience disasters or emergencies have “gamed” the system in a way that funnels excessive federal resources to their post-incident redevelopment. Conversely, legislators from large population states maintain that FEMA’s per capita threshold system of disaster cost measurement disadvantages large population states and their localities. This is because large population states must have experienced massively costly disasters to meet or exceed FEMA’s threshold. For small population states, the threshold bar appears to be set far lower, making it easier for those states and their localities to qualify.

The Conservative Center for American Progress, drawing from annual federal departmental disaster spending records, concluded that for fiscal years 2011 through 2013 inclusive, a total \$136 billion of taxpayer funds or “an average of nearly \$400 per household”¹⁴¹ had been expended. The center’s article maintains that the federal Office of Management and Budget, as well as Congress, routinely underestimates federal disaster spending and so fail to budget adequate funds in advance of disaster, thus necessitating federal borrowing when budgeted funds are exhausted during a fiscal year.¹⁴²

Over the years, federal disaster officials have attempted to establish definitive and quantitative requirements for disaster declaration eligibility. One such effort would have strictly tied declarations to damage translated into dollars per capita.¹⁴³ These efforts proposed rigorous declaration criteria, but presidents have resisted and Congress has vehemently opposed such measures.¹⁴⁴ Presidents do not want their range of declaration discretion further circumscribed or ceded to federal disaster officials.¹⁴⁵ Legislators want assurance that they may use their legitimate political influence to press the president for declarations directly when their home states and districts experience incidents or events they consider emergencies or disasters.¹⁴⁶

Presidents, assisted by their staffs and top disaster agency officials, must judge each governor’s request for a declaration based on need. However, both managerial and political factors may enter the president’s judgment. Clearly, initial damage assessments, imminent disaster threat (e.g., a hurricane about to make landfall), news media coverage of an event, and the like may make it obvious to the president that a governor’s request deserves approval.¹⁴⁷ There are also many instances when presidents, and perhaps their advisers, are unconvinced of the need or worthiness of the request. Still, the president makes these determinations in a political environment.¹⁴⁸

When the requests are accepted, FEMA, not the president, decides how much money to allocate. Remember that a major share of FEMA funding to eligible parties under a major disaster or emergency declaration is through means-tested applicant-driven programs similar to entitlements. Conversely, a very substantial share of FEMA funding goes out under public assistance (government to government) aid, which requires formal application administered as project grants of various types. Proving disaster declaration worthiness and need is, for better or worse, often an issue of public money. The “Tell Me More” 4-4 box summarizes the problem of dollar loss estimation and ability to (financially) recover in the absence of a federal declaration of major disaster.

History demonstrates that from May 1953, the time of the first serially numbered presidential disaster declaration, until January 2013, the president has approved about three in every four (75 percent) gubernatorial requests for declarations of major disaster and emergency. Since 1989, following adoption of the Stafford Act, the chance that the president will approve a governor’s request has risen to about a four in five (80 percent)

(see Table 4-3).¹⁴⁹ Certainly, the broader authority to judge what is or is not a disaster under the Stafford Act has provided presidents since 1988 with more latitude to approve unusual or “marginal” events as disasters or emergencies. This may be one reason for the higher rate of gubernatorial request approvals since 1988.

During his four years in office, President George H. W. Bush averaged 39 disaster declarations annually. Over the seven years of the Clinton presidency that Reeves studied, Clinton averaged 72 disasters per year.¹⁵⁰ Table 4-3 shows that over his full two terms, eight years, Clinton approved a total 380 major disaster and 68 emergency declarations, thus averaging 47.5 a year for major disasters and 8.5 for emergency declarations a year over his two terms. In contrast, President G. W. Bush, also a two-term president, approved 458 major disaster and 140 emergency declarations. Both categories show a sizable increase in the number of major disaster and emergency declarations issued over Clinton years relative to G. W. Bush years. President G. W. Bush annually averaged 57.25 major disaster and 17.5 emergency declarations. In reading these declaration totals of Table 4-3, remember that many factors are in play: more recent presidents may have decided to issue fewer turndowns, thus prompting more governor requests that were eventually approved;

TELL ME MORE 4-4

OVERWHELMED OR OVER BUDGET?

The word *overwhelmed* is subject to different interpretations. It is extremely difficult to determine whether a municipality, county, or state is overwhelmed by a disaster or emergency. The word *overwhelmed* connotes “incapacity.” A dictionary definition of *overwhelm* is to surge and submerge, to engulf, to overcome completely, either physically or emotionally, to overpower, to turn over or upset.¹⁵¹ Presumably, if a municipality, county, or state can respond to and recover from a disaster or emergency using their own resources, they are not overwhelmed. However, the term *overwhelmed* is not easily defined within the realm of intergovernmental relations. Even the worst disasters seldom terminate or suspend the operation of state and local government. In many disasters, state and local governments suffer significant economic losses and government aid to disaster victims is fully justified and deserved, but state and local governments are rarely overwhelmed.

Therefore, *overwhelm* is a disputatious term. Some governors have requested presidential declarations of disaster on the grounds that they

must maintain a balanced budget or because they have no “rainy day” money to pay for the recovery costs. Municipalities and counties have grown accustomed to having the huge costs of public employee overtime and debris removal paid for by the federal government under presidential declarations. As mentioned, governors are tempted to ask for declarations in advance of the onset of disaster because they reason that county and municipal disaster response will be more robust if federal subsidization of response costs is assured ahead of time. Senators and representatives have frequently pressured various presidents to approve declaration requests submitted by the governors of their home states.

A governor’s temptation to “cry poor” before, during, or after some state-level misfortune is often, pardon the pun, “overwhelming.” FEMA deservedness criteria could provide a guide for governors but only if the president makes declaration decisions in conformity with FEMA recommendations. As noted, the president is not compelled to do so.

the uptick in frequency of multistate, ever expansive disasters, means there are more declarations because more states are impacted by the same event. Superstorm Sandy, for example, in 2012 yielded no less than 12 major disaster declarations, demonstrating that it impacted 12 states; and increasing news and social media coverage over time creates a drumbeat of pressure on the White House to expeditiously and generously issue more declarations.

In his 2011 paper, Reeves reports that for presidential disaster declarations issued from 1981 through 2004, “electoral considerations have come to shade a policy,” referring to presidential disaster declarations, “that should be firmly based on need”¹⁵² but are not.

Reeves reports that prior to the Stafford Act (1988) there was no statistically significant correlation between the presidential electoral competitiveness of each state and its respective disaster declaration count.¹⁵³ He is referring to statewide presidential election contests in which an incumbent president is competing to win state electoral votes, especially in certain battleground states. He asserts that “voters react and reward presidents for presidential disaster declarations.”¹⁵⁴ Sylves and Buzas find that in general election years when incumbent presidents seek a second term, there is statistically significant evidence that governors of battleground states important in the president’s reelection calculus experience extremely low disaster declaration request turndown rates.¹⁵⁵ In other words, these governors appear to hold an advantage over other governors when seeking presidential declarations of major disaster. Yet this benefit is confined to the months of the year before the general election and then only when a sitting president is seeking a second term.

Political parties view particular states as “friends,” “enemies,” or “competitive,” based on their likelihood of voting for the party’s presidential candidate.¹⁵⁶ When it comes to disaster declarations and presidential political strategizing, “the size of the state (in terms of electoral votes) and whether the political parties view it as ‘competitive’ matters quite a bit.”¹⁵⁷ Large states friendly to the president appear to be more successful in winning declarations than large, unfriendly states. Reeves shows, “The incumbent president (or his party) is rewarded by voters for providing relief in the wake of natural disasters to the tune of over 1.5 points in the statewide popular vote.”¹⁵⁸

For Reeves, “the Stafford Act transformed the disaster declaration process into a highly political exercise.”¹⁵⁹ Studies by Reeves, Garrett and Sobel, and Dymon infer that the pattern of presidential declaration approvals is consistent with the “politically driven, **distributive politics**” model. When declarations are examined in terms of political geography and elections, it seems that presidents, at least since 1988, are acting “on the basis of political motives, political pressures, and political responsiveness more than they are issued on the basis of objective need.”¹⁶⁰ Governors of large and heavily populated states enjoying a sizable number of electoral votes and previously supportive of the incumbent president may seek to capitalize on this advantage and ask for declarations more often than they normally would. From this perspective, we would expect political factors to influence the odds of receiving a presidential disaster declaration.

Assuming the president does generally follow the recommendations, governors may find that asking for declarations when losses or damage are less than the recommendations, and under FEMA per capita damage thresholds, runs the risk of having requests turned down. Yet most governors would not judge a turndown as a great embarrassment, particularly in an era when presidential disaster declarations seem to be more freely issued

and when a request may provide significant federal benefits to the state. In fact, governors are likely to face severe criticism by news and social media, and by stakeholders, for “not asking” the president to confer their impacted areas a declaration of major disaster or emergency.

As mentioned, once the president approves a governor’s request for a declaration, it is the job of FEMA, not the president, to officially determine how much money is to be allocated to states, counties, and other eligible entities under specified conditions (i.e., damage assessment), laws, and rules—all subject to audit by a variety of government offices, including congressional organizations like the Governmental Accountability Office. Political discretion may possibly be exercised by the president when gubernatorial requests are for low-damage, marginal incidents, involving low federal payouts. This means the relationship is an “inverse one.” In other words, the lower the federal payouts are for various declarations, the higher the probability that political considerations at the presidential level played a role in a president’s approval of a declaration.¹⁶¹ Nonetheless, the federal government is not pushing disaster relief money out of planes. People must apply for it, must prove eligibility, must document their losses, must show that their insurance is not duplicating federal disaster relief, and must submit to inspection and audit. State and local governments are expected to do even more than that in securing federal funds to repair infrastructure. State and local governments also must shoulder a share of the cost of rebuilding under many disaster declarations.

Conversely, “politically driven, distributive politics” comes into play when governors and local public officials respond to disasters by attempting to exploit and maximize federal support to their jurisdictions when in fact their jurisdictions have the ability to respond and recover without federal help. Here state and local taxpayers unfairly gain at the national taxpayer’s expense. On top of this, winning this undeserved federal aid helps to meet their political and constituent needs. These officials want to be re-elected and thus they wish to curry favor with their electorate by providing tangible benefits for which they can claim credit.¹⁶² Elected local and state officials also attempt to shield their constituents from the costs of disaster response and recovery by funding these costs at the national level, thus diffusing the fiscal burden over the largest possible population and taking advantage of the federal government’s easier borrowing powers.¹⁶³ Under this form of distributive politics, state and local government officials tend to shape their behavior to conform to federal criteria to secure as many resources as possible (a form of moral hazard.)

In the economics of declaration decision making, there is a two-track dilemma in president-governor relations. The first track, in economic parlance, involves the issues of “ability to pay” and “willingness to pay.” If a state is judged “able to pay (afford)” the costs of its disaster response and recovery costs, should the governor’s request then be denied by the president with concurrence by FEMA? Here the grounds for a turndown may be that the state (and its disaster-impacted localities) has an ability to recover using their own resources but an unwillingness to pay these costs. However, structural problems may impede a state’s ability to pay (i.e., state balanced budget requirements, restrictions on state borrowing, inability to raise taxes sufficiently quickly to pay for disaster costs, etc.). States with an inability to pay must be differentiated from those states able to pay but unwilling to do so.

The second track involves human need (beyond dollar costs), governmental compassion, and astute behavior by elected officials who desire a positive political and electoral

future. A **need-based, means-tested model** for declaration decisions, ones that meet established rules and proven qualification, are fundamental administrative, rather than political, determinations. Also, to use economic language, to prevent disasters from having negative economic spillover effects in other places and to ensure that all state and local governments possess emergency management capability that is at least consistent with a national minimum standard, the federal government can promote state and local emergency management through grants dispensed after disasters and between disasters. Federal disaster policy aims to “sustain or restore a community’s pre-disaster condition, not to alter the distribution of wealth.”¹⁶⁴

Consequently, need-based disaster management applies if a state or local government’s disaster response and recovery funding is largely self-generated and if those governments have no designs on exploiting national taxpayer money beyond the minimum needed to reestablish itself after a disaster or emergency. In turn, the national government must target its help so that it can keep disasters from producing unwanted, negative spillover effects in the regional or the national economies. The president and his or her disaster managers must avoid driving up federal borrowing to pay for disaster relief. Also, the federal government gains when research, technical advancement, disaster mitigation, and national standards development help state and local authorities prevent disasters or minimize their future damage.

Important politically subjective determinations also come into play in the case of “marginal” disasters. **Marginal disasters** are those events that are far less than catastrophic, that are not matters of national security, and that are near or within the response and recovery capacity of the state or states in which they occur.¹⁶⁵ Analysis of nearly 70 years of presidential disaster declarations discloses that there have been hundreds of marginal disasters, some granted a presidential declaration and some turned down. Specific case examples indicate that there are definite losers in the competition for presidential declarations. For example, in 1980, Florida experienced flooding after a dam failure, and President Carter denied the Florida governor’s request for a declaration. In the same year, he turned down two requests from Oklahoma within a two-week period for a declaration to cover devastation from severe storms and flooding. In April 2013, the city of West in Texas experienced a large and deadly explosion at a fertilizer plant. President Obama, having previously issued Texas an emergency declaration for the explosion, denied Governor Rick Perry’s request for a major disaster declaration to cover uninsured or underinsured government disaster losses.¹⁶⁶ However, Governor Perry appealed the turn-down and eventually the president, in consultation with FEMA officials, approved his appeal and issued Texas a major disaster declaration for the incident. If President Obama year 2016 and President Trump year 2017 (Jan. 20, 2017 to Aug. 22, 2017) are compared with respect to turndown requests for major disaster declarations, Obama issued 18 turndowns over the full 2016 year and Trump issued 7 turndowns over his first seven months in office.¹⁶⁷ All but one of Obama’s turndowns were for severe storm, flood, or both. The notable exception was the turndown Obama issued for Flint, Michigan, drinking water contamination.¹⁶⁸ Trump turned down major disaster requests for two winter storms, two severe storms, one drought, and one flood. He also turned down a North Dakota governor’s request for a major disaster declaration that would have paid for police costs associated with handling protestors who opposed construction and routing of the Dakota Access Oil Pipeline.¹⁶⁹ In the period considered, both presidents have comparable turndown

rates and the nature of the incidents turned down were not at great variance, albeit for Obama's water contamination case and Trump's police reimbursement case. Also, several of the turndowns of 2016 and 2017 are under appeal and may yet be reversed.

The record of approvals and turndowns raises questions about how gubernatorial requests for presidential declarations are considered, particularly for **marginal disaster request denials** and **marginal disaster request approvals**. Marginal disaster denials are cases in which the governor's request fell short of meeting FEMA's threshold criteria and the president denied it. Marginal disaster approvals are cases in which the governor's request fell short of meeting the threshold criteria but the president approved the request anyway. Records here show that some turndowns are issued by the president because what the governor wanted the declaration to address was too unconventional or was improper under federal law and policy. For many years, there have been no objective criteria governing approvals and turndowns, and as stated earlier, only the president who received the governor's request knows the basis upon which a request is approved or denied. Nor is it possible to ascertain statistically from government records whether or not fatalities played a role in a president's decision. FEMA does not keep records of fatalities and injuries sustained in declared disasters or emergencies.

Governors also play the game by seeking presidential declarations for drought, crop failures, minor wildfires, small floods, beach erosion, and a wide range of other calamities that cannot be considered catastrophes, major disasters, or emergencies under the "overwhelm" or "beyond the capability of the state/local government to adequately respond" condition.

Summary

"People look to the President for reassurance, a feeling that things will be all right, that the President will take care of his people."¹⁷⁰ This is an important management responsibility for presidents. As the nation has come to face increasing numbers, wider varieties, and often larger scale disasters and emergencies, changes in law seem to have given presidents more latitude in deciding what constitutes an emergency. Also, the line between what is and what is not a Stafford Act-type incident is getting blurred. Presidents seem to be issuing declarations for non-Stafford Act incidents and using the Disaster Relief Fund to pay for them.

This chapter explored presidential declarations of major disaster and emergency in terms of policies, process, programs, decisional power,

politics, and payment of public money. It was crafted as a chapter, not a stand-alone book. A book-length study of presidential disaster declarations would be expected to examine in more detail how presidents from Truman to Trump have used their declaration authority. Plus, such a book would consider how successive U.S. Congresses have developed authorization and appropriations laws on this subject and how Congress has performed oversight and auditing of federal spending dispensed through presidential disaster declarations. A major analysis would examine in much more detail the leadership and inner workings of pre-FEMA disaster agencies, the independent FEMA (of April 1979–March 2003), and the DHS-FEMA that has continued on from April 2003 to the present. Furthermore, authors of a tome

on this subject would have to cover the behavior and motives of several thousand governors who requested presidential disaster declarations from 1950 to the present. Not to be overlooked are the many beneficiaries of the federal disaster assistance programs activated by presidential declarations of major disaster and emergency. Clearly, this chapter could not go that far.

With this said, it is surprising that countless works purporting to be about disasters and emergencies in America seldom mention or scrutinize presidential disaster declarations. This is a most unfortunate omission. About a dozen or so excellent books do take up the subject of presidents and disaster declarations.

Because over time the U.S. Congress both granted and tolerated ever-wider presidential discretion in deciding what constituted a declarable major disaster or emergency, the system has become more politicized than lawmakers in 1950 ever expected. Also, in presidential judgments about the deservedness of governors' requests, the system tolerates a degree of subjectivity, and sometimes political bias. Owing to this freedom to decide, some presidents have created new categories of disaster type, thus setting precedents governors have been able to exploit in their quest for declarations and federal help. On top of this, the availability of the Disaster Relief Fund furnishes presidents a convenient pool of spending authority to pay the federal costs of major disasters and emergencies they choose to declare.

A tolerated political dilemma continues. U.S. disaster policy holds that the president should not be restricted in using declaration authority to address calamities or crises, some expected and others quite unforeseen. Presidents are accorded the freedom to disregard recommendations of FEMA, if they so choose, when they approve or deny governors' requests for presidential declarations of major disaster or emergency. Yet the president's freedom to decide encourages lawmakers and

taxpayers to suspect that political motives tempt presidents, perhaps in collaboration with elected state and local officials, to distribute various forms of post-disaster federal largess to undeserving states. There are those who posit that some governors and their state legislatures have created a type of "moral hazard" under which the respective state government intentionally under-funds, or rebuffs calls to establish a state "rainy day" fund, so as to convince FEMA and the president that the state lacks the financial resources to recover on its own from some misfortune. Some states forgo creating parallel FEMA disaster assistance programs because their governors and legislators believe they can then better argue "inability to respond and recover" when they request presidential declarations of major disaster. In the words of W. Brock Long, President Trump's current FEMA administrator, "FEMA's ability to provide support in disasters builds on, and is subject to, the capacity of state, territorial, tribal and local governments. This is not a new lesson or challenge, but one that we are constantly reminded of. If the state, territorial, tribal and local governments are well resourced, well trained, and well organized, the effectiveness of FEMA's assistance is great. If, on the other hand, a state, territorial, tribal or local government is not well resourced, well trained, and well organized—either due to ineffective preparations or due to the significance of the disaster itself—FEMA can help, but the response may not be as quick or as effective as we would like it to be."¹⁷¹

Homeland security law and policy has augmented presidential authority and responsibility. These laws and policies have expanded the range of presidential declarations to include terrorism or even terrorist threats (see the section on NSSEs). They threaten to bond conventional Stafford Act declaration issuance for non-terror disasters with a president-led or DHS-led declaration system pre-occupied with terrorism and terrorism threat in its

many forms. The addition of catastrophic incidents formally signifies that some disasters have national security implications and the potential to damage the nation's economy. Presidents, advised by homeland security and federal emergency management officials, today have the power both to decide what a catastrophe is and to declare such events catastrophic disasters. The addition of the "power to declare catastrophic incidents" has again embellished presidential powers and has again altered president-governor and federal-state relations.

For presidentially declared major disasters that are far less than catastrophic, particularly those that are on the margin of deservedness, and which often demonstrate statewide per capita damage totals less than or on par with the per capita FEMA threshold, political factors may come into play. As Miskel reasons, it is "the small disasters" that test measurements of need.¹⁷² When presidents turn down gubernatorial requests for a declaration, the president may be meeting his legal obligation to ensure that if a state and its localities can reasonably be expected to recover from an incident drawing from their own resources, the state is unworthy of a federal declaration. However, the denial of such requests may produce negative political repercussions for the presidents who turn them down.

Clearly, news and social media coverage is highly important in the realm of disasters

and emergencies, as is presidential participation or co-production in the making of disaster news. News media coverage of disasters has helped paint presidential disaster declaration decisions as more "political" than they usually are in fact. In addition, each president's relationship with his or her top federal emergency manager influences how that president handles emerging disaster circumstances and governor requests for federal assistance. A few previous top federal disaster managers owed their appointments to political spoils more than to qualified disaster management expertise. However, several of these people learned disaster management on the job and were guided by senior emergency managers in their agency; others failed miserably when they were needed most. Since enactment of the PKEMRA of 2006, a law that required the president to nominate for FEMA administrator only candidates with previous emergency management experience, the agency has been led by a succession of highly experienced emergency managers. The U.S. disaster declaration process is the Main Street of American emergency management. It is made necessary by American federalism, a complex marriage of federal, state, and local interdependencies, and by a quest for endurance, resilience, burden sharing, and human compassion.

Key Terms

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