

CBO TESTIMONY

Statement of
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on
Budgeting for Emergency Spending

before the
Task Force on Budget Process
Committee on the Budget
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NOTICE

This statement is not available for public release until it is delivered at 1:00 p.m. (EDT) on Tuesday, June 23, 1998.



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Mr. Chairman, Congressman Cardin, and members of the Task Force, thank you for inviting me to testify today on the issue of budgeting for emergency spending. The Congressional Budget Office (CBO) was asked to review the current budgetary treatment of emergency spending, highlight recent trends in emergency and supplemental appropriations, and discuss various options for changing the way policymakers budget for emergencies. In particular, we were asked to evaluate the idea of a separate reserve fund for emergencies.

My testimony today will make the following points:

- o For the past decade or so, policymakers have explicitly acknowledged the value of a budgetary "safety valve" for emergency spending.
- o Under the current practice for funding emergency needs, most emergency spending is provided in supplemental appropriations as emergencies arise, thereby putting a premium on Congressional control over advance planning.
- o Since the Budget Enforcement Act of 1990 was passed, the Congress has generally offset all nonemergency supplemental appropriations with rescissions. Since 1994, the Congress has offset certain emergency supplementals as well.

- o Various options for changing the budgetary treatment of emergencies, including a reserve fund, may highlight emergency needs more effectively and improve planning. However, those changes could make it more difficult to respond to emergencies and could diminish Congressional control.

BUDGETARY TREATMENT OF EMERGENCY SPENDING

"Emergency" is not clearly defined in budget process law. Under current procedures, which have been in effect since 1991, emergency spending is whatever the Congress and the President deem it to be. Emergency spending has been more than just the funding typically provided to the Federal Emergency Management Agency (FEMA) to respond to natural disasters such as hurricanes and floods. It has also included military funding for Operation Desert Storm in fiscal years 1991 and 1992, spending in the wake of such events as the riots in Los Angeles (1992) and the terrorist bombing in Oklahoma City (1995), and funding for peacekeeping efforts in Bosnia (1997).

What those events have in common, of course, is their unpredictability. Disasters and other emergency situations can entail sudden and unexpected demands for high levels of funding. In the case of peacekeeping efforts such as those in

Bosnia, the length and magnitude of the commitment can be difficult to determine in advance. In adopting the recent budget agreements and laws designed to reduce the deficit and control federal spending, both the Congress and the President have recognized the need for some sort of "safety valve" for emergencies. Under the Budget Enforcement Act of 1990 (BEA), currently in effect through 2002, spending deemed an emergency by both the Congress and the President is exempt from the caps on discretionary spending and the pay-as-you-go requirement for mandatory spending or revenue legislation.

Most of the accounts that typically fund emergencies are discretionary, provided for in annual appropriation acts, and are therefore subject to the BEA caps on discretionary spending. To keep total appropriations under the caps, the President usually requests, and the Congress provides, less than may be needed in regular appropriation acts for those accounts. When amounts provided in regular appropriations are inadequate to address an emergency that arises, the Congress will enact supplemental appropriations during the fiscal year, usually at the request of the President.

Background

Since the Congressional Budget and Impoundment Control Act of 1974, a variety of attempts have been made to mitigate the budgetary effects of supplemental spending. Some efforts were directed at better planning for supplementals. Under the 1974 act, the totals in the President's budget request and the budget resolution were to reflect an allowance for "unanticipated uncontrollable expenditures"—that is, contingency amounts that might later turn into supplementals. Other efforts were directed at offsetting supplemental spending with rescissions. In response to passage of the Balanced Budget and Emergency Deficit Control Act of 1985, the Office of Management and Budget generally required agencies to suggest offsetting rescissions for all supplemental requests unless an agency could provide a "fully justified explanation" as to why it could not do so.

In 1987 and 1989, the President and the Congress, as part of two budget summit agreements, set caps on total appropriations. However, they did not want those caps to impede supplemental appropriations for true emergencies and did not feel that full offsets with rescissions should be required in such situations. The President and the Congress therefore agreed that neither branch would require offsets for supplementals in response to "dire" emergencies. As some observers have wryly noted, that action probably did little to hold down supplemental spending for emergencies: it merely made all emergencies dire ones.

Emergency Spending Under the BEA

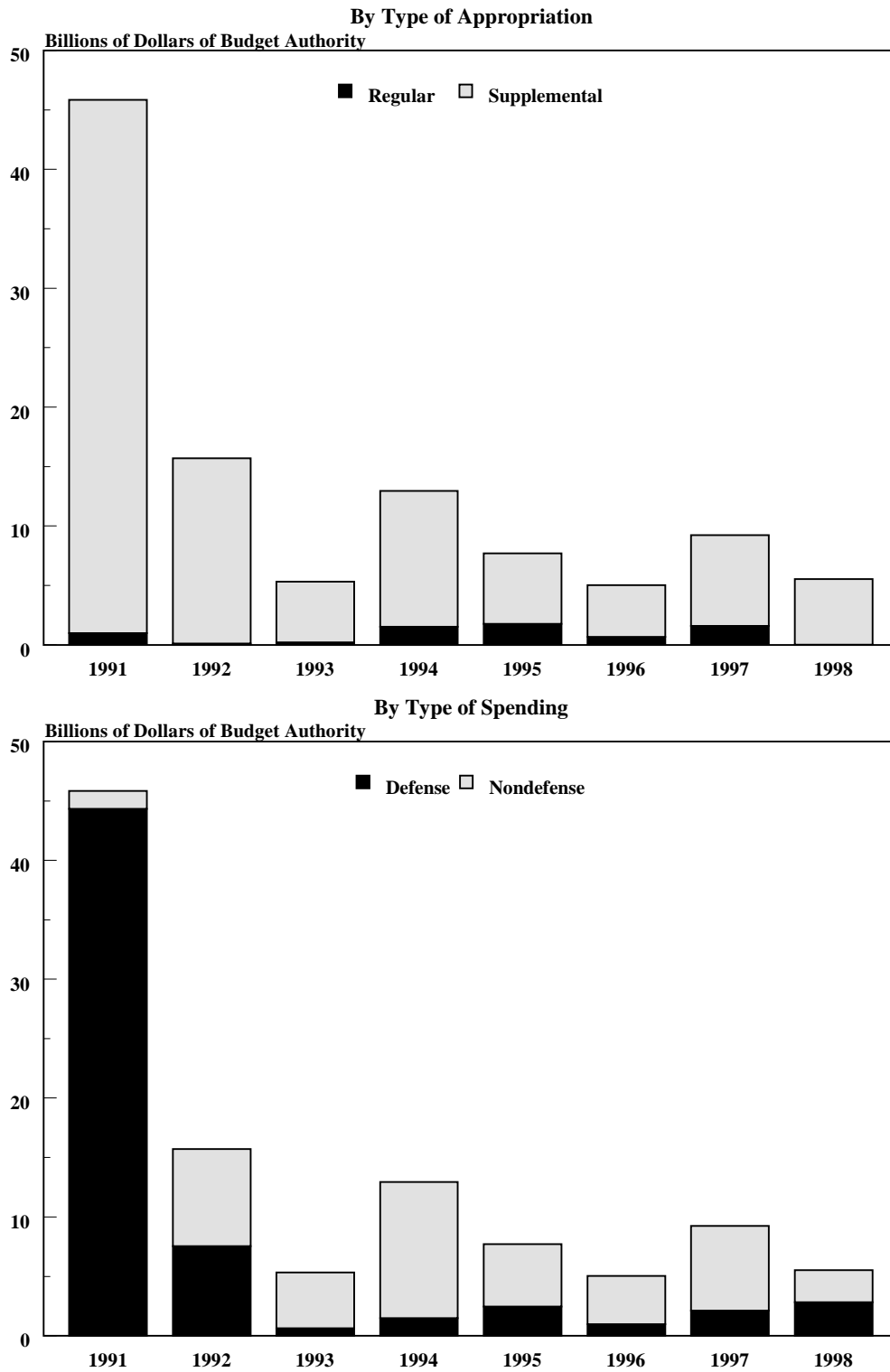
In 1990, as part of a new, multiyear budget agreement, the Congress and the President adopted new procedures for deficit control. Those procedures, embodied in the Budget Enforcement Act of 1990, established statutory limits on discretionary spending and a deficit-neutral pay-as-you-go (PAYGO) requirement for new mandatory spending and tax legislation. Unlike the "contractual" caps on spending imposed by the 1987 and 1989 agreements, the discretionary spending limits and the PAYGO requirement under the BEA would be enforced by automatic spending cuts, or sequestration. Those disciplines have been extended twice since 1990—most recently as part of the Balanced Budget Act of 1997—and are in effect through 2002.

Following the precedent set in the 1987 and 1989 budget agreements, the BEA exempts any spending designated jointly by the President and the Congress as an "emergency requirement." (Spending for the Persian Gulf War was automatically exempt under the act.) The discretionary spending limits are adjusted for any appropriations for designated emergencies, and the PAYGO estimates and calculations exclude any emergency mandatory spending or tax legislation. Congressional budget resolution totals and allocations are also adjusted for designated emergency spending or revenue amounts.

CBO has separately identified emergency spending in a systematic way since 1991. The bulk of the funding designated "emergency" is in the form of supplemental spending, although some emergency items are contained in regular appropriations. Figure 1 shows the amounts of emergency spending in two ways: as regular or supplemental appropriations and as defense or nondefense spending. The large amounts in 1991 reflect the costs of Operation Desert Storm/Desert Shield, which were offset by contributions from other countries. Table 1 also displays those emergency spending amounts and separately identifies outstanding contingent emergency spending as well. Contingent emergency spending is first appropriated by the Congress as an emergency requirement but must await Presidential designation as an emergency before the funds can be obligated. For purposes of Congressional scorekeeping, CBO scores both designated and contingent emergency spending at the time they are considered by the Congress.

Since the advent of Gramm-Rudman in 1985, the Congress has sought to constrain the effects of supplemental spending by including offsetting rescissions in supplemental appropriation acts (see Figure 2, which shows supplemental appropriations as a share of total discretionary budget authority). Since the BEA was passed, the Congress has enacted rescissions to fully offset nonemergency supplemental spending in most years. Since 1994, the Congress has done the same to offset certain emergency costs as well.

FIGURE 1. DESIGNATED EMERGENCY SPENDING, 1991-1998



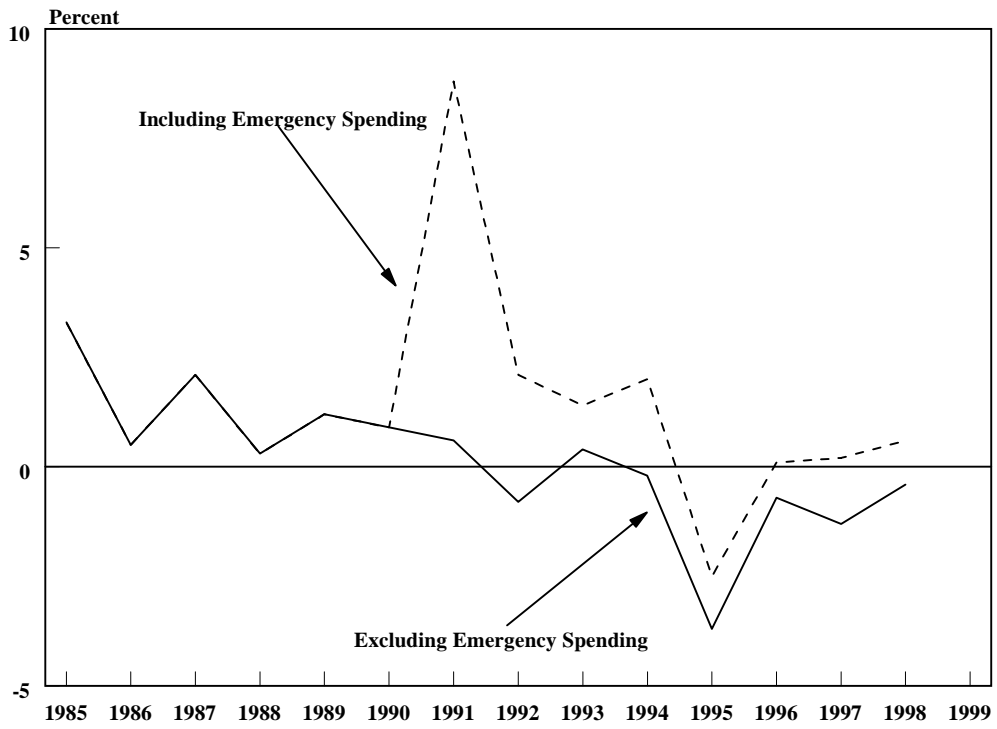
SOURCE: Congressional Budget Office.

TABLE 1. DESIGNATED AND CONTINGENT EMERGENCY SPENDING, 1991-1998
(In millions of dollars of budget authority)

	1991	1992	1993	1994	1995	1996	1997	1998
Designated Emergency Spending								
Total	45,846	15,708	5,336	12,947	7,717	5,047	9,236	5,540
By Type of Appropriation								
Regular	1,000	107	218	1,529	1,774	692	1,612	5
Supplemental	44,846	15,601	5,118	11,418	5,943	4,355	7,624	5,535
By Type of Spending								
Defense	44,337	7,527	642	1,497	2,448	980	2,107	2,832
Nondefense	1,509	8,181	4,694	11,450	5,269	4,067	7,129	2,708
Contingent Emergency Spending								
Total	0	460	693	918	613	4	307	479
Regular Appropriations	0	314	660	303	613	0	307	300
Supplemental Appropriations	0	146	33	615	0	4	0	179

SOURCE: Congressional Budget Office.

FIGURE 2. DISCRETIONARY SUPPLEMENTALS NET OF RESCISSIONS
(As a share of total discretionary budget authority)



SOURCE: Congressional Budget Office.

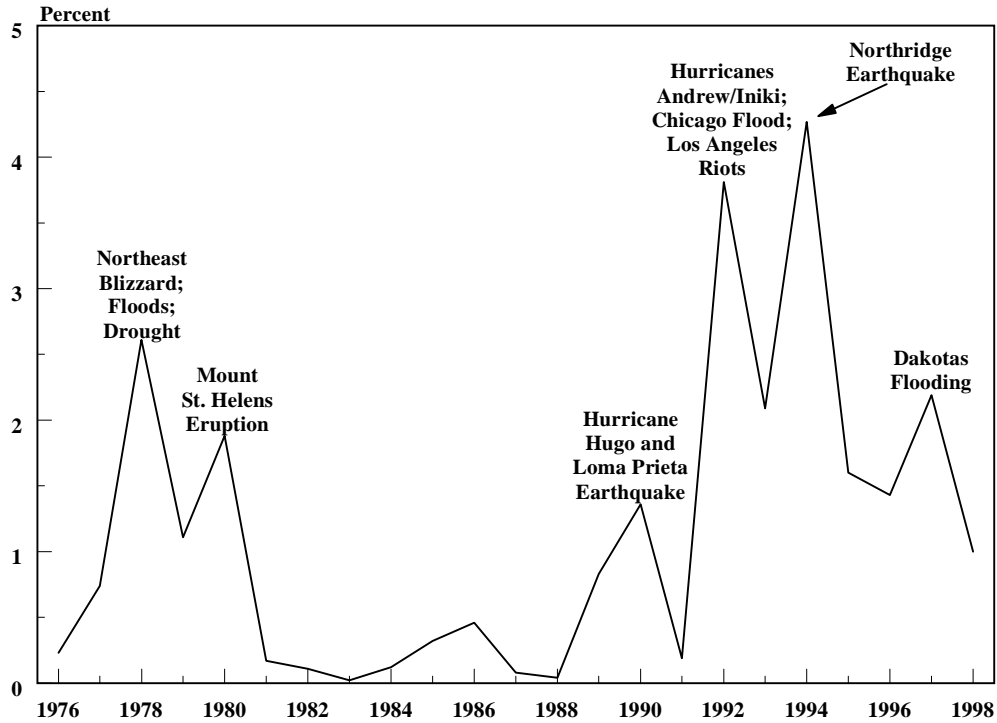
Historical Perspectives on Disaster- and Emergency-Related Spending

Two earlier CBO analyses summarized data on supplemental spending for the 1970s and 1980s.¹ Figure 3 combines those data with data on domestic emergency spending for 1991 through 1998 (that is, excluding defense and international spending). The data are not strictly comparable. Before 1991, they only show supplemental spending related to natural disasters (for example, the northeast blizzard, floods, and drought in 1978; the eruption of Mt. St. Helens in 1989; and Hurricane Hugo and the Loma Prieta earthquake in 1989 and 1990). In contrast, after 1991 the data include spending for some emergency items that are not related to natural disasters (for example, the Los Angeles riots and the Oklahoma City bombing).

Since 1991, domestic emergency spending has been high relative to the disaster-related spending shown in the 1970s and 1980s. Some analysts would attribute that to excesses resulting from a combination of tight discretionary caps and the existence of a safety valve. However, many believe that the emergency spending since 1991 reflects the unprecedented incidence of catastrophic disasters rather than any changes in federal budget practices. For example, 1992 included spending following the riots in Los Angeles, flooding in downtown Chicago, and Hurricanes

1. Congressional Budget Office, *Supplemental Appropriations in the 1970s* (July 1981), and *Supplemental Appropriations in the 1980s* (February 1990).

FIGURE 3. DOMESTIC SUPPLEMENTAL SPENDING FOR DISASTERS AND
 POST-1991 SUPPLEMENTAL EMERGENCY SPENDING
 (As a share of domestic discretionary budget authority)



SOURCE: Congressional Budget Office.

NOTES: The figure shows the disasters and emergencies that largely accounted for the spikes in spending.

Pre-1991 data are from CBO, *Supplemental Appropriations in the 1970s* (July 1981), and *Supplemental Appropriations in the 1980s* (February 1990).

Andrew and Iniki; 1993, the Midwest floods; 1994, the Northridge earthquake; 1995 and 1996, antiterrorism initiatives in the wake of the Oklahoma City bombing; and 1997, flooding in North and South Dakota.

ISSUES AND OPTIONS

Opinions about the current budgetary treatment of emergency spending are mixed. Although emergencies are unpredictable, critics of the current system feel that objective criteria, based partly on experience, should be established to guide and constrain decisions about emergency spending. They are also concerned that the emergency designation is a large loophole that allows emergency spending to exceed the discretionary caps without penalty. Some also claim that excessive emergency aid discourages the purchase of adequate insurance or the incentive to take actions that would mitigate the cost of natural disasters.

Defenders of the current procedure fear that many of the proposals to improve the planning and control of emergency spending could lead to underfunding of legitimate emergency needs and would shift too much authority to the President. One advantage of the current system, they assert, is that the Congress takes an active role in deciding the merits of various requests for emergency spending. They also maintain that the emergency safety valve is essential for holding multiyear budget

agreements intact. The discretionary spending limits have become increasingly restrictive in recent years. They claim that this makes an emergency safety valve even more necessary. They note that since 1994, the Congress has offset certain emergency supplemental appropriations with spending cuts.

Several options, discussed below, have been put forward in recent years for changing the budgetary treatment of emergency spending. Those options would:

- o Eliminate the BEA emergency exemption and effectively require emergency spending to be offset;
- o Retain the emergency exemption but require a supermajority vote of the Congress to approve emergency spending;
- o Establish specific criteria for designating spending as an emergency requirement; or
- o Create a reserve fund for emergency spending.

Eliminate the Emergency Exemption

One approach for controlling emergency costs is simply to eliminate the exemption for designated emergencies under the BEA. Emergency spending would be counted under the discretionary spending limits or included in the PAYGO estimates and calculations, as appropriate. Emergency appropriations would have to compete with other funding priorities in regular appropriation acts; emergency spending provided in supplemental appropriation acts during the fiscal year would have to be offset with spending cuts.

Policymakers may choose to offset emergency spending costs while retaining the emergency exemption. As mentioned earlier, since 1994, the Congress has routinely included offsets for certain emergency supplementals without being required to do so by budget law. Eliminating the emergency exemption and requiring offsets by law could make the process less flexible. Without the exemption, a major domestic disaster in a heavily populated area or a massive overseas troop deployment, for example, could require several billion dollars in additional spending and force large offsets in other programs.

Require a Supermajority Vote for Emergencies

Another approach would be to retain the BEA emergency exemption but require a supermajority vote, perhaps a three-fifths majority, to approve any emergency spending. The Senate, for example, currently employs a series of three-fifths voting requirements to waive various enforcement provisions under the Congressional Budget Act, and requiring a three-fifths vote for emergencies would generally be in step with those requirements. One advantage of this approach is that it would require a change only in Congressional procedure, not in the BEA, and thus would not require the President's concurrence.

Advocates of a supermajority vote maintain that it would create a more rigorous test for policymakers while retaining the current emergency safety valve. A true emergency, they claim, would easily garner the necessary three-fifths majority. Opponents counter that such a requirement would give too much power to a determined minority in a single House of the Congress. They are also concerned that it would put the onus for emergency spending discipline on the Congress alone, whereas the President would be able to recommend any amount of emergency spending without penalty.

Establish Criteria for Emergency Spending

The BEA does not set forth any criteria for policymakers to use in designating spending as an emergency requirement. Some advocate establishing specific standards that would have to be met before spending could be declared an emergency requirement under the act. Such criteria, they say, would make decisions about emergencies less subjective, would guard against abuses of the emergency designation, and would strengthen budgetary discipline and control.

In 1991, the Office of Management and Budget drafted the following five criteria to use in deciding whether funds should be designated as an emergency requirement:

- o *Necessary expenditure*—an essential or vital expenditure, not one that is merely useful or beneficial;
- o *Sudden*—quickly coming into being, not building up over time;
- o *Urgent*—a pressing and compelling need requiring immediate action;
- o *Unforeseen*—not predictable or anticipated as a coming need; and

- o *Not permanent*—the need is temporary.

In theory, those or other criteria would shrink the range of spending provisions that would qualify for the emergency requirement and make it more difficult for such provisions to be enacted. Those criteria might also provide additional information for policymakers to consider and might give opponents objective grounds on which to contest emergency spending. However, it is unlikely that any set of criteria would completely remove the subjective element from policymakers' decisions about emergency spending. Furthermore, it is possible that such criteria would be ineffective and would simply appear as a few standard paragraphs in each emergency supplemental appropriation act.

Establish a Reserve Fund for Emergencies

The federal government could set up an emergency reserve fund, similar to those used by some state governments. In general, a reserve fund would consolidate most or all emergency spending into a single fund or budget account and would provide budgetary resources in advance of emergency needs. However, establishing a reserve fund for emergencies, by itself, would not resolve the question of whether emergency spending should be exempt from BEA requirements. If policymakers establish a reserve fund and eliminate the BEA emergency exemption, they will have to find

ways to accommodate or pay for emergency needs under the discretionary spending limits and the PAYGO requirement.

Furthermore, it is not necessary to establish a reserve fund to budget and provide sufficient funds for emergencies. No procedural hurdle prevents policymakers from increasing regular appropriations for anticipated emergency needs, as long as their actions are consistent with the discretionary spending limits. However, one advantage of using a separate reserve fund is that it might highlight overall emergency needs more effectively and enable policymakers to draw a more direct connection between emergency spending and any offsets used to pay for that spending. An emergency reserve fund could also be used to encourage efforts to avoid or mitigate disasters as well as to highlight potential alternatives to federal action, such as state or local initiatives or private insurance.

Proposals to establish a reserve fund have come from both the President and the Congress. The President proposed a contingent emergency reserve account for domestic emergencies in his 1998 budget. His 1998 appropriation request for the fund (\$5.8 billion) was based on the average annual discretionary cap adjustments made for such emergencies since 1991. However, the President proposed that the requested amount, and any additional amounts that might be needed later, should continue to be exempt from the BEA's discretionary caps.

In the Congress, H.R. 457 would establish a budget reserve account funded through annual appropriation acts and controlled under Congressional budget resolution procedures. It would also eliminate the BEA exemption for emergency spending and require that such spending be budgeted along with other appropriations under the discretionary spending limits. H.R. 1372 would establish a "rainy-day" fund for natural disasters. It would create a separate functional category in the budget resolution for spending related to natural disasters and would authorize the President to impound amounts appropriated in excess of amounts budgeted for disasters.

The concept of a reserve fund raises a number of significant questions and issues, including how much to provide to the fund, how it should be controlled, and how or whether its use should be enforced under current budget disciplines. For example, given the wide fluctuation in emergency spending over the years, what is the appropriate amount for the fund, and for what period should it remain available? Who should control the release of these funds and under what conditions? If the President is given the authority to control the funds, how or should his authority be circumscribed? Finally, is any budgetary discipline or fail-safe mechanism needed to ensure that the fund is not abused or used for unintended purposes?

Funding. A reserve fund is intended to eliminate the need for supplemental appropriations, essentially by budgeting for those supplemental amounts in advance.

However, it is impossible to know how much emergency spending will be needed in any given year. One solution would be to make a permanent, indefinite appropriation to the fund from which most or all emergency needs could be drawn as needed. That arrangement would eliminate the uncertainty of funding, but it could create a large and relatively uncontrollable source of funds for federal agencies that would not be subject to annual review by the Congress.

Another approach would be to annually appropriate to the fund an amount based on a historical average spent during a prior period of five or 10 years. That approach is already used for fire-fighting programs of the U.S. Forest Service and the Department of the Interior and has been used as the basis for appropriation requests for the FEMA Disaster Relief Fund. However, in calculating the average amounts spent on disaster relief, the Administration has excluded certain very costly disasters, such as spending for Hurricane Hugo and the Loma Prieta and Northridge earthquakes of the early to mid-1990s. Even though the large amounts spent on those disasters seemed to be funding aberrations at the time, excluding them nonetheless skews the calculation of average historical costs and raises questions about how such costs should be calculated.

If some historical average was used as a benchmark to fund emergency reserves, any balances remaining in the fund at the end of the fiscal year could be carried over for qualified spending in later years—the approach used for fire-fighting

programs. However, in the case of a single reserve fund for all emergencies, carryover balances could become quite large if spending needs in any single year were much less than appropriated. Thus, a critical issue is how and under what conditions amounts in the reserve fund, including any carryover balances, should be controlled.

Control. One option for controlling balances in the reserve fund would be to allow them to lapse at the end of each fiscal year. That approach would tighten control of the funds, but it could defeat the purpose of providing advance emergency funding and could lead to excessive spending just before the funds lapse at the end of the fiscal year.

Another option would be to allow balances in the fund to carry over but to give the President control over how those balances should be obligated. Under the President's 1997 proposal for an emergency reserve fund, amounts in the fund would be available for obligation 15 days after the President notified the Congress of his intent to use them. The President would be given flexibility to use the funds for disaster assistance programs as needed. That approach could be more efficient than the current practice of having the Congress control supplementals, but it would shift budgetary power away from the Congress. It also presumes that the President is less likely than the Congress to spend excessively or wastefully for emergency needs.

A different approach would be to center control of a reserve fund in the Congress, through the budget process. For example, a reserve amount could be recommended in the budget resolution and allocated to the appropriations committees or other committees of jurisdiction. Alternatively, the Congress could use a contingent reserve fund procedure that delays the decision about how much to set aside for an emergency reserve. For example, an additional allocation for emergency spending to the appropriate committees of jurisdiction could be made under the budget resolution only when legislation offsetting that spending was considered or adopted by the Congress. Postponing the decision about how much should be appropriated to the reserve fund could, however, make it more difficult to find sufficient offsets if emergency spending needs were unexpectedly large.

Enforcement. Another issue involves whether separate budget enforcement disciplines should be created to constrain emergency spending. Regardless of whether policymakers decide to retain the BEA emergency exemption, they could choose to establish procedural controls to ensure that emergency spending is held to budgeted amounts.

One such device, which could be used in conjunction with an emergency reserve fund, would be to create a "fire wall" for emergency discretionary spending that is enforced by separate caps on discretionary spending. Separate caps are now in place for defense and nondefense spending, certain discretionary spending for

highways and mass transit, and the Violent Crime Reduction Trust Fund (the separate defense and nondefense caps are merged after 1999, and the separate violent crime caps expire after 2000). A separate cap for emergencies could be carved out of total discretionary spending as well, with the other caps reduced commensurately by the total amount reserved for emergencies. To ensure that amounts reserved under the emergency caps would be appropriated only for emergency purposes, policymakers could identify in law or in committee report language (as they do now for other capped spending categories) the specific budget accounts that may be funded under those caps. Emergency spending appropriated in excess of the caps would then trigger across-the-board reductions either in all or in a select group of discretionary spending programs.

However, wide fluctuations in total emergency spending from year to year might make caps unrealistic and inflexible. Policymakers have revised the discretionary spending limits only twice since 1991 (in 1993 and 1997). More frequent revisions would probably be necessary if caps were set on emergency spending. In some years, emergency spending needs might exceed the caps by large amounts, and the resulting sequestration or spending offsets could force large reductions in other programs. In other years, when emergency spending needs fell well below capped levels, policymakers might be tempted to fund other programs with amounts reserved under the emergency spending caps.

CONCLUSION

It is impossible to predict the catastrophic events or unexpected developments that lead to emergency spending. Yet experience informs us that they will indeed occur, and on a fairly regular basis. Generally, lawmakers have dealt with those unpredictable eventualities in ad hoc fashion, providing the bulk of emergency funds as they are needed. But some lawmakers wonder if that approach is best. They are concerned that needs for emergency funding in the midst or aftermath of a crisis, when public pressure for funding is strong, may lead to unnecessary or wasteful spending. They feel that changes in the budgetary treatment of emergencies may help control costs. Others are skeptical and fear that proposed budgetary changes could make it more difficult for a consensus of lawmakers to provide needed assistance.

Budgeting for emergency spending is inherently difficult and uncertain. Emergency funds are provided for a wide variety of purposes, are administered by several departments and agencies, and are unpredictable for any given fiscal year. Policymakers have therefore acknowledged the need for a budgetary safety valve for true emergency needs as a part of recent budget enforcement disciplines. They are concerned, however, that the safety valve has served as an excuse to avoid planning for those needs and has provided a budgetary loophole for excessive spending.

A reserve fund for emergencies might promote better planning in the budget process. Whether it could also help control costs is unclear. It will be difficult to fashion a budgetary mechanism that completely eliminates the need for emergency supplemental appropriations. Making changes in emergency programs—for example, to incorporate measures to mitigate costs—might be one approach to easing the budgeting task, but uncertainty is likely to remain a central element of that process.

Ultimately, the options for changing the budgetary treatment of emergency spending are limited by the current budget enforcement process. As long as the discretionary spending caps and PAYGO requirement remain in effect, policymakers face a fundamental choice: to exempt emergency spending from those budget enforcement disciplines, or to find ways within those requirements to offset unexpected emergency costs. Those contrasting approaches represent a key difference among the various options for changing the budgetary treatment of emergency spending.