

# Report for Congress

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## **Federal Disaster Policies After Terrorists Strike: Issues and Options for Congress**

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# Federal Assistance After Terrorists Strike: Issues and Options for Congress

## Summary

As a result of the terrorist attacks of 2001, a plethora of legislation has been enacted and continues to be considered by the 107<sup>th</sup> Congress to address homeland security and emergency management issues. Much of the debate in and out of Congress focuses on legislation that addresses policies and practices intended to prevent future attacks. Congress is also considering other policy issues, including those that would be implicated should another attack occur, despite the best prevention and deterrence efforts. How will the federal government respond to the short- and long-term needs of stricken communities? Such policies guide federal consequence management actions.

This report, prepared at congressional request, is intended to assist Congress as it considers options for consequence management legislation. The report collects and examines information on federal policies that would be implemented in the event that other terrorist attacks occur. It then asks about each of these policies: Based on experiences gained thus far, should Congress consider changes in federal consequence management policies to address the effects of possible future attacks? The report explores two types of issues—selected administrative issues pertinent to the delivery of assistance, and selected policy issues about the assistance provided.

The 12 issue sections in the report follow a common format: an issue statement, background information and analysis (including information specific to terrorist attacks), and policy options. For the most part, this report concentrates on the impact of the airliner attacks in New York City because the consequences of those attacks in a major urban center raise complex issues of response and recovery that were not as evident in Pennsylvania, Virginia, and the District of Columbia after the other airline crashes and the anthrax mailings.

The report is not a critique of federal consequence management policies and actions. Despite record levels of federal assistance, all expectations and needs after terrorists strike will not be, and cannot be, met. Unfortunately, other perceived failures or questions will likely be brought to the attention of Congress in the event that other terrorist attacks occur in the United States.

This report is not a comprehensive collection of all pertinent issues. It has been prepared to help Members of Congress consider the relative merits of selected legislative options related to federal consequence management in light of reports of problems, deficiencies, or questions raised after September 11. Other issues that Congress might elect to consider will be identified and included in future updates to this report.

## Contents

Overview .....	1
General Observations .....	8
Policy Options .....	13
<b>ADMINISTRATIVE ISSUES .....</b>	<b>14</b>
Definition of “Major Disaster” and “Emergency” .....	14
Eligibility for Stafford Act Assistance .....	26
Federal Coordination of Recovery Assistance .....	33
Expedited Public Health Studies .....	43
Tracking Federal Costs of Disasters .....	46
<b>POLICY ISSUES .....</b>	<b>53</b>
Local Government Revenue Loss .....	53
Reimbursement for Security Alerts .....	61
Environmental Hazard Assessment and Communication .....	68
Indoor Air Testing and Cleaning .....	85
Measures of Need for Temporary Housing .....	90
Small Business Assistance .....	93
Assistance to Education Systems .....	99
<b>Conclusion .....</b>	<b>106</b>
Summary of Policy Options .....	106

## List of Tables

Table 1. Statutory Definitions of “Major Disaster” and Emergency .....	17
Table 2. Federal Disaster Assistance Obligations, FY1984-1993 .....	50
Table 3. Summary of CDL Program, 1976 to 2001 .....	56
Table 4. Summary of CDLs by Current Status, 1976 to 2001 .....	57
Table 5. CDLs Greater than \$5 Million .....	60

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# Federal Assistance After Terrorists Strike: Issues and Options for Congress

## Overview

Following the terrorist attacks of September 11, 2001, Congress and the Bush Administration quickly moved to meet the needs of victims, their families, and the stricken communities and businesses of New York City and Virginia. Congress appropriated funds in emergency supplemental legislation (P.L. 107-38 and P.L. 107-117) for a range of purposes including payments to victims, removal of debris, reconstruction of federal buildings and non-federal public facilities, and emergency services. The assistance was provided by federal agencies through programs that have been long established under existing laws that authorize grants, loans, technical assistance, and the use of federal resources to save lives and property and to speed recovery.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) is a key statute that authorizes the President to determine when and what types of federal assistance should be dedicated because a disaster has overwhelmed state and local resources.<sup>1</sup> Other statutes authorize specified federal agency heads to provide aid for certain activities or purposes.<sup>2</sup>

Since September 11 considerable assistance, roughly \$6 billion through March 2002, has been obligated for disaster assistance and other non-defense purposes solely from the Emergency Response Fund established pursuant to appropriations in P.L. 107-38.<sup>3</sup> (As noted in the section “Tracking Federal Costs of Disasters,” it is not possible to accurately identify total federal disaster assistance obligations.) According to the Congressional Budget Office, \$11.8 billion had been appropriated for communities and victims for disaster relief as of March 31, 2002, in P.L. 107-38 and P.L. 107-117.<sup>4</sup> President Bush reportedly promised that at least \$20 billion

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<sup>1</sup>42 U.S.C. 5121 et. seq.

<sup>2</sup>For an overview of federal assistance programs see: CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada. See also: CRS Report RS20739, *Federal Disaster Relief Programs: Brief Summaries*, by Keith Bea.

<sup>3</sup>U.S. Office of Management and Budget, “Report on Expenditures from the Emergency Response Fund” (Washington: March 31, 2002).

<sup>4</sup>U.S. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2003-2012* (Washington: Jan. 2002), p. 117.

would be provided to New York.<sup>5</sup> Despite this assistance, news reports, statements by officials testifying before Congress, and other sources provide insights into perceived failures, gaps, and weaknesses in the range of federal policies.

This report has been prepared at the request of Members of Congress who identified issues that might be explored by Congress if other terrorist attacks occur in the United States. The request generally sought information that would facilitate congressional consideration of existing governing authorities in order to improve federal action in the future. The specific issues identified by the Members included:

1. Assisting communities suffering due to tax revenue shortfalls that result from a terrorist attack;
2. The definitions of “major disaster” and “emergency” in the Stafford Act, and related presidential declaration authority, to determine if other provisions may be necessary to respond to destruction resulting from a terrorist attack;
3. Policies and practices concerning the reimbursement of costs incurred by state and local governments for “high security alerts” issued by the director of the Office of Homeland Security, or other federal officials;
4. Gaps in federal statutes that address environmental hazards and public health concerns;
5. The issues associated with economic development policies after disasters (including terrorist attacks) occur, notably with regard to the provision of loan assistance to small businesses;
6. The availability of information on federal costs incurred from past disaster declarations and the need to improve the quality of such information for congressional consideration;
7. Federal coordination of large-scale recovery efforts after terrorist attacks, including current procedures and plans for agencies to combine resources;
8. Possible revision of provisions concerning the eligibility of organizations for Stafford Act assistance, such as the expansion of the definitions section to include certain for-profit enterprises such as utilities or medical institutions; and,
9. The unmet needs of educational institutions and systems.

This report has 12 issue sections because four separate entries have been included on the fourth issue, gaps in environmental and public health policies.

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<sup>5</sup>Raymond Hernandez, “Bush Offers Details of Aid to New York Topping \$20 Billion,” *The New York Times*, March 8, 2002, p. A1.

Because the Stafford Act, most of which is administered by the Federal Emergency Management Agency (FEMA), authorizes funds for a wide range of disaster assistance activities, it is the focus of much of the discussion in this report. However, federal consequence management policies are based upon statutory authorities beyond the Stafford Act. Accordingly, the report provides information on and discusses policy options for other statutes administered by federal agencies other than FEMA.

The 12 issue areas included in the report may be viewed as an initial attempt to identify areas of federal policy that Congress might consider. As debate proceeds on legislative options, other issues will likely be identified and included in updates to this report. This report is not intended to be comprehensive in identifying potential issues for congressional consideration, but of assistance in debate on specific policy issues or in a reconsideration of a range of federal emergency policies.

**Federal Policy Limitations.** Certain needs are common to all disasters, whether of terrorist or natural origin. Survivors require temporary shelter and possibly long-term housing alternatives when insurance coverage is nonexistent or inadequate. Threats to health increase, financial assistance might be sought to meet unexpected urgent needs, and public services might be disrupted or destroyed. Federal disaster assistance policy has evolved over much of the Republic's existence to better meet these needs and to address others previously unmet.<sup>6</sup>

As a result of the growth and development of benefits over decades, citizens have apparently developed increasing expectations of the assistance to be provided after catastrophes. As summarized by one Member of Congress after Hurricane Hugo struck the Carolinas and an earthquake destroyed parts of San Francisco in 1989:

I think one of the problems we have often had is that the expectations people have for what FEMA is going to do are often not matched by what FEMA is able to do, quite frankly. I think there has been a situation where we have raised expectations and those expectations have not been met.... Perhaps the real issue here is how we educate people to what FEMA is able or not able to do given the legislation.<sup>7</sup>

That perception is not limited to FEMA and the policies it implements; it arguably applies to all federal consequence management policies. Some expectations cannot be met by the federal government because they are unrealistic, costly, or difficult, if not impossible, to provide to all victims. For many victims of disasters,

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<sup>6</sup>For an overview of the historical basis for federal disaster assistance policy see: Michele L. Landis, "Let Me Next Time Be Tried by Fire: Disaster Relief and the Origins of the American Welfare State 1789-1874," *Northwestern University Law Review*, vol. 92, Spring 1998, p. 967-1034. For information on the relatively recent evolution of federal disaster policies see: U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S. Doc. 104-4, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995).

<sup>7</sup>Statement of Representative William F. Clinger, Jr. in: U.S. Congress, House Committee on Public Works and Transportation, Subcommittee on Investigations and Oversight, *Federal Emergency Management Agency's Response to Natural Disasters*, hearings, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., May 1 and 2, 1990 (Washington: GPO, 1991), pp. 127-8.

federal assistance cannot compensate for certain losses, including the death of or permanent injury to loved ones, emotional trauma, and permanent changes in neighborhoods. Some victims or communities may never be the same, and some losses from terrorist attacks, in particular, can never be compensated. Other expectations may be considered more realistic, but the needs of individual victims and communities may overwhelm available federal resources. Despite the best of intentions and efforts, the federal government cannot make whole the communities that have been victimized by terrorist attacks. Federal aid assists, but does not completely heal or resolve, losses. Historically, Congress has established the boundaries of the extent to which expectations should be met.

The attacks of September 11 have renewed congressional interest in evaluating the effectiveness of federal emergency management policies (now referred to, to some extent, as homeland security).<sup>8</sup> Both the scope and the administration of those policies are under review<sup>9</sup> as Members of Congress hear from constituents about unmet needs as well as administrative difficulties that may be frustrating, considered inhumane, or seen as incomprehensible. Throughout, Members of Congress will be called on to balance perceived needs with fiscal and constitutional limitations.

**Overall Structure of Report.** This report provides background information and policy analysis on both administrative and policy issues related to the consequences of terrorist attacks in the United States. The report is intended to assist Members of Congress and staff in the evaluation of legislation already introduced and options for new legislation. While the terrorist attacks have served as catalysts for the current debate, most of these issues apply equally to other catastrophic events. As shown in the “Background” information included in each issue section, many of these issues have been debated in the past, sometimes without resolution.

The first section of the report addresses administrative issues that have been identified since September 11. These issues include the criteria used to determine which communities or victims receive assistance, the procedures used to administer the assistance, and the collection of information about the assistance provided. The specific issues discussed include the following:

- Definition of “Major Disaster” and “Emergency”: What are the terms used in federal statutes to trigger federal assistance; should Congress consider legislation to revise the criteria for federal action?

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<sup>8</sup>The term “emergency management” includes a range of actions that involve planning for disasters, responding to immediate needs, stimulating the long-term recovery of the affected area, and reducing disaster risks (mitigation) for the future.

<sup>9</sup>The CRS Terrorism Electronic Briefing Book provides overview information on congressional action and issues under debate. See: [<http://www.congress.gov/brbk/html/ebter1.shtml>], visited June 11, 2002. For a compilation of legislation introduced on all facets of the terrorism issue, see: [<http://www.congress.gov/brbk/html/ebter149.html>], visited May 23, 2002.

- **Eligibility for Stafford Act Assistance:** Should private, for-profit organizations be eligible to receive grants and technical assistance provided to public or nonprofit organizations?
- **Federal Coordination of Recovery Assistance:** Do existing authorities and plans governing federal recovery programs sufficiently facilitate coordination of federal assistance?
- **Expedited Public Health Studies:** To protect citizens from diseases or health risks, should federal law be amended to expedite public health studies?
- **Tracking Federal Costs of Disasters:** Is legislation needed to require the systematic compilation of federal disaster assistance expenditures?

The second section of the report reviews some of the emergency management policy issues reported or discussed since September 11. The types and amount of federal assistance provided and options for federal involvement in meeting victims' needs are discussed in this section. The seven substantive policy issues included in this report include the following:

- **Local Government Revenue Loss:** Should the federal government provide assistance for non-federal governments' tax revenue replacement? Is so, under what limitations?
- **Reimbursement for Security Alerts:** What are the options for possible federal participation in or reimbursement of security costs associated with terrorist attack alerts?
- **Environmental Hazard Assessment and Communication:** How might Congress address concerns that responses to threats posed by environmental hazards have been deficient and have failed to protect the health of residents and workers?
- **Indoor Air Testing and Cleaning:** Are statutory and administrative policies sufficient to establish responsibilities for these tasks?
- **Temporary Housing:** Should Congress reconsider existing authorities for the provision of temporary housing needs after terrorist attacks?
- **Small Business Assistance:** In the event of a disaster of catastrophic magnitude, should federal authorities that stimulate recovery be revised?
- **Assistance to Education Systems:** Are there unique and unmet needs associated with effects of attacks that result in damages to public education systems?

**Caveats: Limitations of This Report.** Three major caveats should be kept in mind by readers of this report. First, the sources (generally news stories) used to identify issues or problems encountered after September 11<sup>th</sup> may be of questionable accuracy, may not be corroborated, or may have been produced with a partisan or



biased intent. Second, the report has been prepared to address issues that might arise if the United States is attacked again. The likelihood of future attacks has not been assessed in the preparation of the report; the assumption that other attacks will take place might (we hope) prove incorrect. Third, the range of issues included in this report is incomplete but partially indicative of the consequence management policy issues Congress might decide to consider.

**Information Sources.** The first limitation concerns the information sources used to prepare this report. A search of databases and agency contacts reveals that only one report has been issued by a federal agency to summarize and identify problems or issues that arose from the September 11 attacks.<sup>10</sup> Some non-federal organizations have completed limited “lessons learned” reports on issues primarily associated with the emergency response phase, such as protection for first responders,<sup>11</sup> the collection and management of blood supplies,<sup>12</sup> and health care system needs.<sup>13</sup>

Also, federal information sources were not consulted for every issue raised in the report. Other than the collection of primary data for the “Local Government Revenue Loss” section, no attempt has been made to consult with officials from the Federal Emergency Management Agency (FEMA) to assess the validity of some of the information in the news reports. In part, these contacts were not initiated to expedite the delivery of this information to Congress. To the extent known, however, the data collected for this report reflects much of the information disseminated thus far. A database search conducted by CRS revealed that no documents other than those cited in this report have been published by federal agencies on the lessons learned or experiences associated with the implementation of federal policies in the post-9/11 period.<sup>14</sup>

The sources consulted in the preparation of this report also reflect the limitations and caveats associated with the passage of time. While some of the consequence management issues surrounding the attacks of September 11 in New York City may have been somewhat or even fully resolved (such as the clearance of debris, certain financial assistance needs, and eligibility determinations), others appear, or are

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<sup>10</sup>U.S. Environmental Protection Agency, *Lessons Learned in the Aftermath of September 11, 2001* (Washington: GPO, 2002).

<sup>11</sup>Brian Jackson and others, *Protecting Emergency Responders—Lessons Learned from Terrorist Attacks*, (Arlington, VA: RAND, Science and Technology Policy Institute, 2001).

<sup>12</sup>American Association of Blood Banks, Interorganizational Task Force on Domestic Disasters and Acts of Terrorism, *Report and Recommendations*, at: [[http://www.aabb.org/Pressroom/In\\_the\\_News/idfddat013002.htm](http://www.aabb.org/Pressroom/In_the_News/idfddat013002.htm)], visited June 14, 2002.

<sup>13</sup>Joint Commission on Accreditation of Healthcare Organizations, “Mobilizing America’s Health Care Reservoir,” *Joint Commission Perspectives*, Dec. 2001, at: [<http://www.jcrinc.com/subscribers/perspectives.asp?durki=2512&site=10&return=1122>], visited June 14, 2002.

<sup>14</sup>As noted previously, this report is expected to be updated and expanded by CRS. Newly available information and analysis pertinent to the report will be considered in preparation of the update.

reported to be, in flux.<sup>15</sup> The 12 issues in this report have been identified through reviews of secondary sources, notably news reports, that discuss problems encountered by individuals, organizations, and government agencies after September 11. Events and decisions have changed rapidly at times, and some of the information and sources referenced in this report may have become moot or superseded through discussions involving federal and non-federal officials.

**Threat Assessments.** The second limitation or caution concerns the references in this report to future terrorist attacks. Such references should not be construed to reflect any assumed probability that attacks will occur. Risk or threat assessment, or the application of risk management and assessment methodologies to the terrorist threat, is an analytical field still in development.<sup>16</sup> While this study assumes that future terrorist attacks, possibly even more devastating than those of September 11, could occur, the authors have no basis for assessing the likelihood that they will occur.

**Scope of Report.** The third limitation concerns the breadth of issues included in the report. Some are relatively discrete and identifiable issues—notably the eligibility of certain organizations for grant-in-aid assistance, the collection of data on federal costs, and reimbursement of non-federal units of government for security-alert costs. Other issues—such as environmental and public health consequences, coordination of recovery assistance, and aid to education systems—involve broader policy issues that are only partially addressed in this report. In addition, some consequence management issues that have been raised in press reports and other sources are not addressed at all by this report, including victim compensation, mental health counseling needs outside the school systems, and financial aid for certain private businesses.

Perhaps the most significant limitation concerns the question of the overall intent of federal consequence management policy. The issues addressed in this report relate to possible modifications of existing policies but do not address options related to a complete revision of federal policy objectives. More fundamental policy questions might be phrased as follows: Should federal disaster assistance always be provided after an attack? Should Congress consider factors—such as competing budget priorities (e.g., funding for the armed forces to fight the war, continuity of government, or urgent domestic social policy or civilian protection needs), the extent to which a community has been contaminated, or the degree to which certain areas has been or might be repeatedly struck by terrorists—in determining when, where, and how much consequence management assistance is to be provided?

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<sup>15</sup>This report primarily focuses on the attack in New York City because the problems and questions that have been reported in New York City pose particularly complex policy questions and provide an indication of the possible impact of future attacks in metropolitan areas. This focus should not be seen to reflect on the tragedy and impact of the attack on the Pentagon, the airliner crash in Pennsylvania, and the anthrax mailings.

<sup>16</sup>Refer to: U.S. General Accounting Office, *A Risk Assessment Approach Can Guide Preparedness Efforts*, testimony of Raymond J. Decker, GAO-02-208T (Washington: Oct. 31, 2001).

Historically, federal disaster assistance policy is intended to facilitate the rebuilding, recovery, and reoccupation of areas destroyed by hurricanes, floods, earthquakes, fires, or other events that occur for relatively brief time periods and do not generally recur.<sup>17</sup> The destruction associated with terrorist attacks, however, could span longer periods of time, result in the contamination of residential or commercial neighborhoods with toxic or radiological substances, and require considerable investments of federal and non-federal resources. The Administration's proposal for the establishment of a Department of Homeland Security addresses this issue to some degree, as follows:

We cannot assume that we can prevent all acts of terror and therefore must also prepare to minimize the damage and recover from attacks that do occur....The consequences of a terrorist attack are wide-ranging and can include: loss of life and health, destruction of families, fear and panic, loss of confidence in government, destruction of property, and disruption of commerce and financial markets. The Department would lead federal efforts to promote recovery from terrorist attacks and natural disasters. The Department would maintain FEMA's procedures for aiding recovery from natural and terrorist disasters.<sup>18</sup>

The complex and problematic issue of whether federal consequence management policy should provide for options other than rebuilding, recovery, and reoccupation is not addressed in this report, but may be considered in an update.

## General Observations

Some of the issues addressed in this report share certain features or reflect common attributes. In addition to evaluating policy options on the specific issues, Congress may decide to consider some broader policy concerns such as the following.

**Grants or Loans?** Those affected by disasters (individuals, private business operators, and public officials) primarily seek federal financial assistance through grants-in-aid instead of loans. Many managers of businesses or government entities facing revenue loss because of the attacks (or any disaster) may find it difficult to repay a loan, regardless of the interest rate charged. For example, as reported months after the attack in New York, one group of small business owners was bused to Washington "to lobby members of Congress for immediate relief and tell them they need grants, not loans, to survive."<sup>19</sup> Accordingly, an overarching concern applicable to many of the issues addressed in this report may be whether the current balance between grants and loans is appropriate. For example, in the section that discusses local government revenue loss, the option of creating a new grant program is

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<sup>17</sup>One exception is the issue of repetitive loss due to flooding, as explored in: National Wildlife Federation, *Higher Ground* (Washington: 1998). Some have advocated a reduction or limitation in federal assistance for properties subject to frequent flooding.

<sup>18</sup>U.S. President (Bush), *The Department of Homeland Security* (Washington: June 2002), p. 11.

<sup>19</sup>Terry Pristin, "Desperate Trip to Lobby for Grants, not Loans," *The New York Times*, Nov. 4, 2001, p. B9.

included as it represents a policy option previously adopted by Congress but modified in 1974. Congress could decide to revisit its earlier decision to authorize loans and not grants.

**Non-Federal Resources.** The resources, efforts, and authority of non-federal entities has a bearing on federal policy. State laws (and, in some cases, local ordinances), insurance policies provided through the private sector, voluntary association resources, and individual assets have all been used or sought to help communities recover from the September 11 attacks. This report does not provide many details on the role of non-federal organizations and the assistance they provide. Non-federal entities have a long tradition of being involved in response and recovery activities after disasters, and the provision or dearth of federal assistance can have a considerable impact on the role of such organizations as well as the efforts of individuals and families.

Some information has previously been compiled on the combination of federal and non-federal assistance provided after an attack or other catastrophe.<sup>20</sup> State and local governments have historically provided considerable financial assistance to victims of disasters, a practice continued after the September attacks.<sup>21</sup> Insurance companies continue to assess the extent of damages and their costs, estimated by some to exceed \$40 to \$70 billion.<sup>22</sup> One estimate, prepared by the New York City Partnership and considered by the General Accounting Office (GAO) to include the “most comprehensive estimates,” found that total damages in New York City from the attacks resulted in losses of approximately \$83 billion, \$67 billion of which “would most likely be covered by insurance, federal payments, or increased economic activity.”<sup>23</sup>

Voluntary associations have also provided assistance to individuals and to families. For example, the Liberty Disaster Fund administered by the American Red Cross has provided roughly \$560 million to meet needs of victims.<sup>24</sup> Other organizations provided assistance as well. Some of the issues raised in this report

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<sup>20</sup>One such compilation is: U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S. Doc. 104-4, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995).

<sup>21</sup>For a discussion of non-federal funding for emergencies and the terrorist attacks see: *Intergovernmental Financing of Emergency Management*, by Steven Maguire, at: [<http://www.congress.gov/brbk/html/ebter212.html>], visited April 17, 2002.

<sup>22</sup>For a discussion of insurance coverage and policy issues see: *Insurance Industry Response to Terrorist Attacks*, by Rawle King, at: [<http://www.congress.gov/brbk/html/ebter139.html>], visited April 17, 2002.

<sup>23</sup>U.S. General Accounting Office, *Review of Studies of the Economic Impact of the September 11, 2001, Terrorist Attacks on the World Trade Center*, GAO-02-700R (Washington: May 29, 2002), p. 2.

<sup>24</sup>For information see: “News Release: American Red Cross and Former Senate Majority Leader George Mitchell Unveil Plan Providing \$360 Million in Additional Assistance to 9/11 Families,” at: [[http://www.redcross.org/press/disaster/ds\\_pr/020130libertyfund.html](http://www.redcross.org/press/disaster/ds_pr/020130libertyfund.html)], visited April 17, 2002.

are, to some extent, addressed by non-federal entities or agreements, but this report does not contain information on that assistance. In addition, an issue related to assistance provided by voluntary and non-profit charitable organizations is not addressed in this report—the effect of federal aid on the funding and operations of such entities. Controversies associated with the distribution of funds received by charities after September 11, discussions about the equity of financial assistance awards, and the intent of federal law that prohibits duplication of assistance all have a bearing on the respective roles of agencies in assisting victims and their families.

**The Federal Role.** The boundaries between federal and state responsibilities might be examined in light of the attacks of September 11. One of the long-standing principles of federal disaster assistance policies has been that federal aid should supplement, not supplant, non-federal efforts. The record-level amounts of assistance appropriated in P.L. 107-38 and P.L. 107-117, the assistance provided to the airline industry in P.L. 107-42, the unemployment assistance extended in P.L. 107-147, and other actions taken by the 107<sup>th</sup> Congress and the Bush Administration in the aftermath of the attacks might have established precedent for an expanded federal role in consequence management after terrorist attacks. Some critics, however, have argued that in certain areas the federal government has provided less assistance, or insufficient aid, in comparison to that given after past disasters, leaving the states to absorb the costs.

For some, an expanded federal role is justified because the attacks constituted an act of war involving international terrorism. Accordingly, they contend, the federal government has broad responsibility to provide assistance. The performance of federal officials in processing and using intelligence data on potential threats, they argue, led at least in part to the disaster. As reportedly asserted by one city councilman in New York City, “It was the federal government that failed in its responsibility to protect New York, and it’s the federal government that needs to pay to make us whole.”<sup>25</sup>

The responsibility of the federal government is not easily settled. Precedent arguably exists for the federal government to provide compensation for victims of disasters caused, or aggravated by, federal officials. Congress has in the past provided assistance, or authority to settle claims against the federal government, after the culpability of the federal government in the consequence from certain disasters was established, or action or inaction by federal employees exacerbated conditions. Such disasters include the following:

- explosions and fire in Texas City, Texas, in 1947;<sup>26</sup>
- quality of federal inspections and design requirements that reportedly contributed to the failure in Idaho of the Teton dam in 1976;<sup>27</sup>

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<sup>25</sup>Frank Lombardi, “Kelly Backed by Council in OT Aid Bid,” *New York Daily News*, March 19, 2002, p. 9.

<sup>26</sup>P.L. [84]-378, 69 Stat. 707.

<sup>27</sup>P.L. 94-355, 90 Stat. 889; P.L. 94-400, 90 Stat. 1211; P.L. 94-438, 90 Stat. 1415; P.L. 95-  
(continued...)

- fires in Yellowstone National Park and National Forests “which were originally classified as prescribed fires but subsequently became wildfires” in 1990;<sup>28</sup> and,
- the spread of a fire in New Mexico in 2000.<sup>29</sup>

Some might argue that the federal government is responsible for stopping terrorist attacks before they occur, and therefore should be held responsible for costs incurred if such efforts fail. Others might contend that liability was established in most of the above examples because the disasters were the direct result of federal actions, not of federal failure to stop the actions of other parties.

Debate on the budget for FY2003 and on the role of the federal government in consequence management will continue in the shadow of threats of other terrorist attacks in the United States. Congress might elect to establish boundaries for the role of the federal government, acting from one or more of several perspectives—for example, financial concerns and limitations (the budget will set the “bottom line”), the balance of powers between the federal and state governments envisioned by the creators of our federalist system, the role of the private and voluntary sectors, or the needs of victims and stricken communities on a case-by-case basis (each terrorist attack is different).

With regard to the last perspective, Congress might elect to shape federal consequence management policies on the premise that each attack creates unique needs that require congressional consideration, debate, and action. (This perspective was arguably adopted in the aftermath of the September attacks when Congress enacted a series of statutes that addressed liability and economic assistance or civilian protection issues.) If this perspective is taken by Congress following any future terrorist attacks, precedents in the development of consequence management policies will exist. Traditionally, the types and amounts of assistance provided after one disaster have been sought after succeeding catastrophes. This is not a new development. The impact of precedents for federal assistance has always been present in congressional debate on disaster relief and the federal role in consequence management. This role may be seen in questions raised nowadays by citizens and Members of Congress (“They received this aid after the hurricane last year, why aren’t we receiving it this year?”) as well as in reports of discussions that took place in Congress over 200 years ago:

Mr. W. Smith said he wished to lay a resolution on the table. It was well known that the city of Savannah, in Georgia, had suffered in the most alarming manner, by that greatest of all calamities, fire, so that four-fifths of the whole town was

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<sup>27</sup>(...continued)

629, 92 Stat. 3635. For background on the disaster see: U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Research and Development, *Oversight—Teton Dam Disaster*, hearings, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., Jan. 24, Feb. 21, 1977 (Washington: GPO, 1977).

<sup>28</sup>P.L. 101-302, 104 Stat. 230-231.

<sup>29</sup>P.L. 106-246, 114 Stat. 583-590.

reduced to ashes. He was desirous that some relief should be afforded to the unhappy sufferers from the Treasury of the United States....Mr. Cooper said, it was a very unpleasant thing to come forward to oppose a measure of this sort; but, when they looked into different parts of the Union, and saw the losses which had been sustained at New York, Charleston, etc., it would appear only reasonable that, if relief was afforded in one case, it ought to be extended to another; and, if this resolution were agreed to, he should certainly move to have some relief afforded to New York.<sup>30</sup>

**Presidential Discretion.** As is the case with many significant policy issues, Congress, in addressing any of the consequence management issues reviewed in this report, will, directly or indirectly, confront the boundaries of the extent to which the President is granted discretion. The decision to issue a major disaster or emergency declaration, the determination of eligibility, and the type and amount of assistance to be provided may be rigidly established by Congress or left, to some degree, to the President or executive branch officials.

The extent of discretion granted to the executive branch touches many of the issues discussed in this report. As explained in some of these issue sections, some news reports indicate that certain decisions made by FEMA, EPA, and other officials after September 11 appeared arbitrary or inconsistent with federal policies. As a result of these concerns, Congress might reevaluate the degree of discretion that is appropriate. Some options Congress might choose to consider include:

- in lieu of a presidential major disaster declaration, declare by statute that when terrorist attacks result in specified levels of damages, or when terrorists use a specified means of attack (such as a radiological dispersion device), such incidents constitute a major disaster;
- authorize certain agency heads to provide assistance to communities that suffer losses involving a certain percentage of the tax base, particularly if exposure to a chemical or biological weapon forces local government officials to close off a business district for years;
- specify that interagency commissions be established, a certain number of meetings occur, or existing plans be integrated to ensure that interagency coordination and communication improves.

These and other options related to increasing response efficiency and effectiveness may be raised in the debate over the proposal of the Bush Administration to establish a Department of Homeland Security.

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<sup>30</sup>“Relief to Savannah,” *The Debates and Proceedings in the Congress of the United States*, 4<sup>th</sup> Cong., 2<sup>nd</sup> sess., vol. 6, Dec. 26, 1796, p. 1695, 1712. See also an account of a similar debate that reportedly took place in 1827 that involved Representative Davy Crockett in: Rep. Ron Paul, remarks in the House, *Congressional Record*, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., vol. 129, p. 4043-44.

## Policy Options

This report makes no judgement on the need for any particular change. It compiles information on difficulties, problems, or weaknesses cited in the media or identified by governmental agencies. There is no question that much has been accomplished with federal assistance in responding to the tragedies of September 11 and beginning the recovery process. It also is clear that some questions have been raised that arguably bear further consideration.

One overriding question facing Congress is whether the range of existing federal policies—many, but not all of which are discussed in this report—is appropriate for consequence management purposes if a terrorist attack even more devastating than that of September 11 were to occur. The Stafford Act, and other authorities that have guided federal officials since September, have been used for years to manage the consequences of hurricanes, floods, earthquakes, and some terrorist explosions.

However, scenario builders have, for years, posited that the release of a chemical weapon, an outbreak of smallpox or other disease, or the explosion of a nuclear device could wreak havoc and severely disrupt, if not destroy, urban centers. To a certain extent, the horrifying events of September 11 are more similar to other disasters in that they were caused by and associated with explosions. Chemical, biological, radiological, and nuclear weapons, if used by terrorists, would pose different and differently disruptive dangers. Congress might elect to evaluate the need for alternative federal policies should future consequences of terrorist attacks be more difficult to manage.



## ADMINISTRATIVE ISSUES

### Definition of “Major Disaster” and “Emergency”<sup>31</sup>

**Issue Summary.** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue a “major disaster” declaration only when catastrophes have occurred due to such natural events as floods, hurricanes, and earthquakes or, “regardless of cause, any fire, flood, or explosion.”<sup>32</sup> The Act grants the President greater latitude to issue an “emergency” declaration for “any occasion or instance” in which the President determines federal aid is required.<sup>33</sup>

Certain terrorist actions could devastate communities, yet not result in a major disaster declaration because the event causing the destruction does not meet the statutory definition of “major disaster.” While such events might well lead to an emergency declaration, the authorized assistance might not be sufficient to meet a community’s needs. Congress might choose to consider legislation that would initiate federal assistance after terrorist actions, regardless of the means of attack.

**Issue Analysis.** Presidential designation of a catastrophe as a “major disaster” might be a critical factor in the restoration of a community’s economy after a terrorist attack.<sup>34</sup> Terrorist attacks that do not result in either a major disaster or an emergency declaration might result in the departure of businesses and the deterioration of services in a community, due to the inability of the state or local government to facilitate full recovery.

A Stafford Act major disaster declaration makes available the full range of federal disaster relief assistance to stricken counties and cities. Some types of assistance available under a major disaster declaration include the repair, replacement, or reconstruction of public and nonprofit facilities, cash grants for personal needs of victims, temporary housing vouchers or replacement accommodations, and unemployment assistance related to the disaster.<sup>35</sup>

Considerably less federal assistance is authorized under an emergency declaration. The Stafford Act imposes a limit of \$5 million in assistance for each

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<sup>31</sup>Written by Keith Bea, Government and Finance Division.

<sup>32</sup>42 U.S.C. 5122(2)

<sup>33</sup>42 U.S.C. 5122(1)

<sup>34</sup>Research on economic assistance for recovery is available in a number of sources, including: Richard Vogel, “The Impact of Natural Disaster on Urban Economic Structure,” *Review of Radical Political Economics*, vol. 30, Summer 1998, pp. 114-22; Roger G. Noll, “The Complex Politics of Catastrophe Economics,” *Journal of Risk and Uncertainty*, vol. 12, May 1996, pp. 141-46.

<sup>35</sup>For more information on the assistance available under the Stafford Act see: [<http://www.fema.gov/r-n-r/>], visited Feb. 14, 2002.

emergency declaration.<sup>36</sup> The assistance authorized under an emergency declaration — emergency response aid, debris removal, and financial assistance to households and individuals — could leave some unmet needs in attacked communities.

***Application to Terrorist Attacks.*** The individuals and communities affected by the terrorist attacks of September 11 in New York City and Virginia have been eligible to receive the full range of major disaster assistance authorized in the Stafford Act, as well as that available under other authorities.<sup>37</sup> In the future, other states might not be eligible for such declarations because of the form of the attack. Terrorists can strike by using technology or weapons of mass destruction (WMD) that do not result in fires, floods, or explosions.<sup>38</sup> The following examples of other types of attacks probably would not fit the Stafford Act definition of causal events for a major disaster declaration, but might lead to considerable loss of life or community distress.<sup>39</sup>

- A cyber-attack on computer systems in a community could result in a shut-down of utilities, the loss of millions of dollars due to lost wages, spoiled food, and traffic jams, and possibly the loss of life if emergency response personnel were unable to provide life saving services.<sup>40</sup>
- The contamination of a water system or supply of food with nuclear, chemical, or biological agents might result in illness or death of consumers and emergency and response personnel.<sup>41</sup>

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<sup>36</sup>42 U.S.C. 5193. However, the President may exceed this limitation and must then report to Congress on the extenuating circumstances and the need for legislation on the matter.

<sup>37</sup>The types of assistance provided after a disaster depend on the needs of stricken communities. Brief information on other federal authorities is provided in: CRS Report RS20739, *Federal Disaster Relief Programs: Brief Summaries*, by Keith Bea. More detail is available in: U.S. Federal Emergency Management Agency, *Disaster Assistance: A Guide to Recovery Programs*, FEMA 229(4) (Washington: 1995).

<sup>38</sup>A WMD has been defined as “any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of (A) toxic or poisonous chemicals or their precursors; (B) a disease organism; or (C) radiation or radioactivity.” See 50 U.S.C. 2302.

<sup>39</sup>For information, including scenarios, on potential terrorist attacks that might not result in a Stafford Act declaration, see: Harry C. Vantine, Ph.D., “Threats Posed by Nuclear Devices and Radiological Dispersal Devices,” and “Statement of Dr. Steven E. Koonin on Radiological Terrorism,” testimony before U.S. Congress, Senate Foreign Relations Committee, 107<sup>th</sup> Cong. 2<sup>nd</sup> sess., March 6, 2002 [unpublished]. For a list of witnesses see: [<http://foreign.senate.gov/hearings/hr020306a.html>], visited June 5, 2002.

<sup>40</sup>“Among the scenarios often talked about are terrorists sabotaging air traffic control systems and thereby causing plane crashes; sabotaging electric power systems and thereby causing power blackouts; penetrating government databases; or sending computer viruses around that world that cause disruption or even collapse of international financial and banking systems.” Jeffrey D. Simon, *The Terrorist Trap* (Bloomington, IN: Indiana University Press, 2001), p. xxiii.

<sup>41</sup>“Nuclear material of no real quality, even power plant waste, could be placed in a major  
(continued...) ”

- A small arms attack not involving explosives could close down a metropolitan area for days and disrupt commerce.<sup>42</sup>
- The dispersion (not through an explosion) of radioactive or other contaminants might require the destruction and abandonment of certain buildings in a neighborhood or possibly parts of, if not an entire, city.<sup>43</sup>
- Terrorists might create costly disruptions by dispersing hazardous substances through use of a civilian aircraft or surface transportation vehicles.<sup>44</sup>

**Background.** Over the past five decades, Congress has revised the definition of the term “major disaster” through amendments to the disaster relief authorities that preceded the Stafford Act. Since 1974, the term “emergency” has been revised. Table 1, below, summarizes the evolution of both of these terms.

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<sup>41</sup>(...continued)

air conditioning or water system. There are past cases of terror groups contemplating or attempting such actions in the United States.” Christopher C. Harmon, *Terrorism Today* (London, Frank Cass Publishers, 2000), p. 171.

<sup>42</sup>“The most pressing current threat is that of the *individual or small group with simple automatic weapons* [emphasis in original].” *Terrorism Today*, p. 160.

<sup>43</sup>The Chemical and Biological National Security Program of the Department of Energy is preparing a computer model to simulate “chemical and biological releases within the complex urban environment.” See: [<http://www.lanl.gov/orgs/d/d4/aquality/chbio.html>], visited May 30, 2002. See also: Bill Keller, “Nuclear Nightmares,” *The New York Times Magazine*, May 26, 2002; Marvin J. Cetron with Owen Davies, “The Future Face of Terrorism,” *The Futurist*, vol. 28, Nov.-Dec., 1994, pp. 10-15.

Such an attack, while fearsome to contemplate, poses considerable difficulties for the perpetrators. As summarized by one group that analyzes homeland security issues: “It is unlikely that a terrorist group could, on its own, construct a nuclear weapon. However, terrorist groups might try to steal or buy nuclear weapons or nuclear material from nations where weapons and materials are available to such groups or poorly guarded. Although an RDD [radiological dispersion device] would not likely cause a high number of casualties, it would likely cause economic damage, necessitate the destruction of some contaminated structures, and spread psychological fear. To counter the threat, the US has installed nuclear sensors at ports and other sensitive areas, and is part of a global effort to create systems to better track radioactive materials.” See: “Padilla Wanted to Build a Nuclear Bomb,” *Homeland Security Monitor*, an email subscription service of Intellibridge, June 17, 2002.

<sup>44</sup>“The fatalities from a successful biological agents attack—release of anthrax spores over populated areas either from a low-flying airplane or a spray can, dissemination of various agents into food supplies, release of botulinal toxin—could be tenfold what we have seen in ‘conventional’ terrorism.” *The Terrorist Trap*, p. 359.

**Table 1. Statutory Definitions of “Major Disaster” and Emergency**

Title of statute/P.L.	Major disaster definition	Emergency definition
“To make surplus property available for the alleviation of damage caused by flood or other catastrophe,” (1947) [P.L. 80-233]	Not defined, but see note <sup>a</sup>	Not applicable
“To authorize federal assistance to states and local governments in major disasters, and for other purposes,” (1950) [P.L. 81-875]	“Major disaster” means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe ... <i>64 Stat. 1109</i>	Not applicable
“Disaster Relief Act of 1966,” P.L. 89-796	“The term ‘major disaster’ means a major disaster as determined by the President pursuant to...[P.L. 81-875]. <i>80 Stat. 1316</i>	Not applicable
“Disaster Relief Act of 1969,” P.L. 91-79	“The term ‘major disaster’ means a major disaster as determined by the President pursuant to...[P.L. 81-875]. <i>83 Stat. 130</i>	Not applicable
“Disaster Relief Act of 1970,” P.L. 91-606	“Major disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe .... <i>84 Stat. 1745</i>	Not applicable
“Disaster Relief Act of 1974,” P.L. 93-288 see note <sup>b</sup>	“Major disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe ... <i>88 Stat. 144</i>	“Emergency” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe .... <i>88 Stat. 144</i>

Title of statute/P.L.	Major disaster definition	Emergency definition
“The Disaster Relief and Emergency Assistance Amendments of 1988,” P.L. 100-707	“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion .... <i>102 Stat. 4690</i>	“Emergency” means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts .... <i>102 Stat. 4689</i>

<sup>a</sup> The 1947 legislation that authorized the President to exercise discretion in determining when federal disaster assistance would be needed did not use the term “major disaster.” The relevant provision read: “That, notwithstanding any other provisions of law, the War Assets Administration shall, whenever the President shall determine it to be necessary or appropriate because of flood or other catastrophe, transfer, without reimbursement ... such articles of personal property ... which ... can be utilized in alleviating ...” *61 Stat. 422*

<sup>b</sup> The types of catastrophes listed in both definitions in the 1974 Act were identical. The difference rested in the authority of the President to determine whether the event caused “damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the federal government ... for a major disaster...” or whether it required “federal emergency assistance to supplement state and local efforts ... for an emergency declaration.”

Congress might choose to continue to debate or revise the definition of these terms in the context of questions such as the following:

- Should a distinction be drawn between “disasters” and national security events such as terrorist attacks, which may be considered acts of war?
- Should “natural” disasters be the main triggers for a Stafford Act declaration? If not, what are the limits to a President’s discretion to issue such a declaration?
- Should widespread diseases, economic disruptions (regardless of cause), utility outages, bombings, or arson be eligible for assistance under the Stafford Act?

Questions similar to these have been raised before. In the past, often after particularly significant disasters have occurred or plans and studies have been released, Congress has debated options that either specify the types of events that might trigger Stafford Act assistance or that grant discretion to the President.<sup>45</sup> Most

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<sup>45</sup>Information on the linkages among emergency management policy developments and events, organizational changes, technological disasters, reports, and other elements are presented in two time lines: *Disaster Time Line: Selected Milestone Events & U.S.* (continued...)

of the declared disasters to date have been classified as natural, not technological or “man-made” disasters.<sup>46</sup>

There have been occasions in the past when Members of Congress have questioned presidential disaster declaration decisions. In 1980, for example, President Carter used the emergency authority enacted in the Disaster Relief Act of 1974 to help South Florida cope with the influx of Cuban migrants from the Mariel boat lift. In disagreement, the Senate considered legislation (S. 3027, 96<sup>th</sup> Congress) to insert the words “physical or natural” in the definitions of “major disaster” and “emergency.” The report accompanying the legislation included the following summary of the issue:

From discussion between Administration officials and Committee members it became clear that a tendency was developing within the Administration to consider, almost exclusively, effects of circumstances in determining the appropriateness of federal response under the Act, rather than weighing as well the nature of the circumstances which led to the disruption. On May 6, 1980, the President declared an emergency for the state of Florida, using the authority of the Act. All appreciated the severe impact the extraordinary numbers of refugees had upon that state and upon the local municipalities of south Florida. Clearly, the burdens surpassed their capabilities, requiring some form of federal assistance in response to a national problem. However, Congress has historically intended the Disaster Relief Act to provide an extensive but fixed range of responses to particular kinds of events spelled out in the definitions provisions of the Act.<sup>47</sup>

President Carter noted in a media interview that he “probably stretched the law a little bit in allotting emergency funds...to alleviate the problem financially in Dade County and other affected areas.”<sup>48</sup>

In an attempt to resolve this difference over statutory intent, the Senate approved S. 3027, which redefined the terms “major disaster” and “emergency” to include the words “other physical or natural catastrophe.” During debate on the Senate floor one Senator expressed agreement with the new language while addressing the issue of the

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<sup>45</sup>(...continued)

*Outcomes and Terrorism Time Line: Selected Milestone Events & U.S. Outcomes*, at: [<http://www.disaster-timeline.com/http://www.disaster-timeline.com/>], visited June 10, 2002.

<sup>46</sup>A presentation of the distribution of declared disasters from 1965 to 1998 throughout the United States is available. The graph does not include raw data on the number of disasters within specified categories, but the great majority of disasters are attributable to “natural” events (in rank order) such as floods, severe storms, tornadoes and floods, and hurricanes. See: [<http://www.bakerprojects.com/fema/mapmain.htm>], visited March 27, 2002.

<sup>47</sup>U.S. Congress, Senate Committee on Environment and Public Works, *Disaster Relief Act Amendments of 1980*, report to accompany S. 3027, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Rept. 96-891 (Washington: GPO, 1980), pp. 1-2.

<sup>48</sup>U.S. President (Carter), “Interview with a Correspondent from the Florida News Network,” *Public Papers of the Presidents of the United States, Jimmy Carter*, 1980-81, book III, Oct. 10, 1980, p. 2155.

scope of the Act, and questioned whether “the Disaster Relief Act [is] the appropriate legislative vehicle to provide financial remedies” for costs associated with hazardous waste dumps?<sup>49</sup> The Senator did not receive an answer during the debate in the Senate, and the House did not act on the legislation.

In Congress, the debate over the definition section of the 1974 Act continued. In 1981, Senators considered the issue on at least two occasions, neither of which involved legislation to amend the Disaster Relief Act. One instance involved debate on reauthorization of a defense procurement statute and a proposed amendment concerning the use of civil defense funds to prepare for disasters as well as enemy attack, a concept referred to as “dual-use.”<sup>50</sup> During discussion on the floor of the Senate of an amendment to the Civil Defense Act of 1950, one Senator addressed a dual-use proposal that would “allow states to expend those funds for certain disaster assistance as well as civil defense purposes.”<sup>51</sup> The amendment to the Civil Defense Act incorporated the term “natural disaster” and, for the purpose of the Civil Defense Act, defined it to include explosions, civil disturbances, or “any other manmade catastrophe.”<sup>52</sup> The Senator acknowledged that the dual-use provision “may have much to commend it,” but noted concerns and questions such as the application of standards in determining which events qualify as major disasters, confusion or uncertainty over the use of similar terms, and the discretion granted the President, as follows:

Would the President interpret this language to mean that Congress now intended to broaden the basic law so that he could declare a major disaster for a civilian riot or for a collision between two jumbo jets killing hundreds of people?<sup>53</sup>

Congress approved the dual-use provision and incorporated it into the Civil Defense Act.<sup>54</sup>

The second instance in which the issue was raised in 1981 was during Senate consideration of the nomination of a FEMA official to be an associate director. One Senator expressed concern about the nominee’s perception that the disaster relief statute did “not appear to be limited to natural or physical occurrences.”<sup>55</sup> Despite

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<sup>49</sup>Statement of Sen. Edward Zorinsky, “Disaster Relief Act Amendments of 1980,” *Congressional Record*, vol. 126, Sept. 26, 1980, p. 27663.

<sup>50</sup>The first congressional action on the dual use issue included a statement of congressional policy recognizing that civil defense funds could be used for disaster preparedness “without adversely affecting” civil defense objectives. 90 Stat. 931-32.

<sup>51</sup>S. 815, 97<sup>th</sup> Congress. See: Sen. Robert Stafford, “Department of Defense Authorizations, 1982—Conference Report,” *Congressional Record*, vol. 127, Nov. 5, 1981, pp. 26841-42.

<sup>52</sup>P.L. 97-86, 95 Stat. 1112, 50 App. 2252(b).

<sup>53</sup> Sen. Robert Stafford, “Department of Defense Authorizations, 1982—Conference Report,” p. 26842.

<sup>54</sup>Sec. 803, P.L. 97-86, 95 Stat 1099 et seq.

<sup>55</sup>Sen. Frank Murkowski, “Federal Emergency Management Agency,” *Congressional Record*, vol. 127, Oct. 6, 1981, p. 23293.

this objection to the nominee’s position (but apparently not to the nominee himself) the nominee was confirmed.

Two years after President Carter’s decision on the Mariel boat lift, the debate apparently continued in the new Administration. An opinion issued by the Department of Justice during the Administration of President Ronald Reagan concluded that little stretching, if any, occurred. In a memorandum issued for then-Associate Attorney General Rudolph Giuliani, the Justice Department concluded that the 1974 statute “covers emergencies arising from both man-made and natural disasters” and set out “touchstones” of an emergency as:

We believe that the Act was meant to encompass catastrophic events—either impending or actual—that threaten property and the lives of people. In the absence of specific facts, we are unable to say with certainty whether a particular “immigration emergency” would constitute such a catastrophic event. Similarly, we are unable to say that the Act could never apply....We have not found anything, either in the Act, its legislative history or administrative practice under it, that would disqualify an emergency or major disaster merely because it involved a massive influx of aliens into the country...Not every immigration emergency will necessarily be an emergency or major disaster under the Act—the President must make separate determinations for each. We do not believe, however, that there is anything in the Act to preclude him from using the Act if he did determine that the requisite need and suffering existed.<sup>56</sup>

The Department of Justice memorandum also noted that, despite its view of the authority, a lack of unanimity existed within the Reagan Administration. “FEMA has taken the position that use of the Act for an immigration emergency is inappropriate...”<sup>57</sup>

The definition issue subsequently remained dormant for over a decade. In 1994, with little debate or contention, the issue was addressed to a limited degree when the Civil Defense Act of 1950 was amended and incorporated as Title VI of the Stafford Act. Title VI, as amended, includes in the definition of “hazard” the term “natural disaster” as well as “an accidental or man-caused event.”<sup>58</sup> This amendment has no bearing on the definition of a “major disaster,” however, as the definitions for Title VI apply only to preparedness assistance authority and not to the federal disaster assistance provisions in Titles IV and V of the Stafford Act.

**Policy Options.** Congress might choose to renew debate over the specificity of definitions in the Stafford Act for a “major disaster” or “emergency.” A range of policy options might be considered regarding the specification of the types of events that lead to the commitment of federal resources after a terrorist attack.

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<sup>56</sup>Larry L. Simms, Office of Legal Counsel, Memorandum for Rudolph W. Giuliani, Associate Attorney General, U.S. Department of Justice (Washington: Nov. 19, 1982), p. 2, 13-14.

<sup>57</sup>Ibid, p. 9.

<sup>58</sup>42 U.S.C. 5195a.



**Maintain the Status Quo.** Congress could elect to retain the existing Stafford Act provisions. Should a terrorist attack occur that cannot be addressed under the Stafford Act’s definition of “major disaster,” other authorities in addition to the Stafford Act could be considered to be sufficient. For one, the National Emergencies Act authorizes the President to declare a “national emergency” (a condition the President determines to exist) and to call into operational status standby provisions of statutory law, based on the needs of the situation, giving the President special powers to meet the needs of the emergency.<sup>59</sup> When declaring a national emergency, the President specifies which provisions of the standby canon he is activating. Using a proclamation or an executive order, the declarations are published in the Federal Register. The President must maintain files and an index of such executive orders and proclamations, and must transmit reports to Congress on expenditures incurred as a result of the exercise of this authority.<sup>60</sup> By joint resolution, Congress may terminate a declaration of national emergency.<sup>61</sup>

Following the September 11 terrorist attacks, President George W. Bush used the authority under the National Emergencies Act to meet certain needs. The President issued two national emergency declarations, the first, issued September 14, 2001,<sup>62</sup> called armed forces reserves into active duty and invoked authorities concerning the retention and assignment of military personnel. The second, issued September 23, 2001,<sup>63</sup> invoked the International Emergency Economic Powers Act mandating the freezing of certain foreign assets in American financial institutions.

In addition to the National Emergencies and Stafford Acts, the President has authority to respond to a release of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.<sup>64</sup> Through the process set out in the National Oil and Hazardous Substances Pollution Contingency Plan (“National Contingency Plan,” or NCP), federal response efforts could be activated should a terrorist attack result in the discharge of “hazardous substances, pollutants, and contaminants.” CERCLA authorizes the President to use the NCP for remedial action “or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.”<sup>65</sup>

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<sup>59</sup>50 U.S.C. 1621. Harold Relyea of the Government and Finance Division contributed the discussion of the National Emergencies Act.

<sup>60</sup>50 U.S.C. 1641

<sup>61</sup>50 U.S.C. 1622

<sup>62</sup>U.S. President (George W. Bush), “Declaration of National Emergency by Reason of Certain Terrorist Attacks,” Proclamation 7463, *Federal Register*, vol. 66, Sept. 14, 2001, p. 48199.

<sup>63</sup>U.S. President (George W. Bush), “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” E.O. 13224, *Federal Register*, vol. 66, Sept. 25, 2001, p. 49079-81.

<sup>64</sup>42 U.S.C. 9601 et seq. CERCLA is discussed in the section “Environmental Hazard Assessment and Communication” in this report.

<sup>65</sup>“Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he  
(continued...)

*Pro.* Advocates of maintaining the status quo might contend that sufficient authority exists to initiate federal assistance under the range of authorities set out in the Stafford Act, the National Emergencies Act, CERCLA, and, to a limited extent, other statutes such as the Small Business Administration (SBA) disaster loan legislation.<sup>66</sup> It might be argued that, in light of the definitions and the discretion granted under these authorities, the President and specified executive officials could direct federal assistance to communities affected by terrorist attacks without additional legislative action (other than appropriations).

*Con.* Some may argue that, while the definitions in existing policies provide authority for presidential action, the President needs clearer statutory authority to respond to terrorist actions in order to direct specific types of assistance to victims and to manage the crisis. In addition to directing the war effort and meeting other urgent needs, it might be argued that potential legal challenges to executive branch decisions regarding consequence management should be minimized or prevented. From this perspective, congressional action on new legislation could enable executive branch officials to develop implementation plans and procedures well in advance of an attack. Some might consider the authority granted the President or executive branch officials under existing statutes to be too limited to provide the necessary assistance that could be required.

***Increase Discretion of the President.*** The definition of “major disaster” in the Stafford Act could be amended to expand the language pertaining to non-natural disasters (“regardless of cause, any fire, flood or explosion”) to other events. This could be accomplished, for example, by returning to the definition enacted in 1974 (see Table 1) and reinserting the phrase “or other catastrophe.” Also, the statute could be amended to apply the definition of “hazard” in Title VI of the Stafford Act to Titles IV and V (major disaster and emergency assistance, respectively).<sup>67</sup> Another option would be to specify the types of terrorist attacks likely to have a devastating effect on a community (such as the use of a chemical, biological, radiological, or nuclear (CBRN) weapon that presents a continued health hazard to residents) as opposed to those with a more limited impact, such as a personal attack by one terrorist, or a few, armed with guns or conventional explosives.

*Pro.* Advocates of this option might contend that the current definition overly restricts the President’s ability to initiate federal assistance to communities affected by terrorist strikes, regardless of cause. In this view, broader language might be needed to give the President authority to take action, particularly in view of the many forms another terrorist attack could take.

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<sup>65</sup>(...continued)

has knowledge of any release (other than a federally permitted release) of a hazardous substance ... immediately notify the National Response Center established under the Clean Water Act of such release.” 42 U.S.C. 9603. Regulations for the NCP are set out in: 40 CFR Part 300.

<sup>66</sup>15 U.S.C. 636. The SBA authority is discussed in the section “Small Business Assistance” in this report.

<sup>67</sup>42 U.S.C. 5195a. “The term ‘hazard’ means an emergency or disaster resulting from—(A) a natural disaster; or (B) an accidental or man-caused event.”

*Con.* Those opposed to broadening the definitions used in the Stafford Act might argue that the original intent of the Stafford Act is to address needs that arise from catastrophic disasters of natural origin, or from events that resemble such disasters. A series of terrorist attacks, all of which resulted in declarations, they may argue, could represent a different type of disaster, which raises policy questions such as: (1) Should limited federal resources be “promised” when consequence management could lead to a significant financial drain on federal fiscal and personnel resources? (2) Should federal resources be committed to rebuild an area contaminated by nuclear fallout or other hazards?

***Expand the Role of Congress.*** Prior to 1950, Congress authorized the provision of all federal disaster assistance through special legislation enacted after specific catastrophes. Congress could consider using its legislative authority to, in effect, declare that federal assistance is to be provided to communities after a terrorist attack if the definitions in the Stafford Act prove too restrictive. To a limited extent, Congress has exercised such authority through supplemental appropriations that have targeted federal assistance to certain disaster-stricken areas, sometimes to supplement existing authority. Some examples of such action focused on the oil spill from the tanker *Exxon-Valdez*,<sup>68</sup> flood damage at Camp Pendleton, California,<sup>69</sup> needs arising from disasters in Nebraska and Kansas,<sup>70</sup> the costs associated with the crash of TWA Flight 800 off Long Island, New York,<sup>71</sup> and damages caused by ice storms in Arkansas and Oklahoma.<sup>72</sup>

Another option would be to increase Congress’s oversight role regarding the authority of the President to issue a declaration. One way of facilitating such a review would be to increase reporting requirements for the President. For example, the Disaster Mitigation Act (DMA) of 2000 included a requirement that the President notify Congress of any public assistance grant exceeding \$20 million for the repair, restoration, reconstruction, or replacement of public or certain non-profit facilities damaged or destroyed by a declared major disaster.<sup>73</sup> Through an amendment to the Stafford Act, a similar reporting requirement could require the President to notify Congress when he has reason to consider issuing a major disaster declaration after any suspected terrorist attack. Once such notification is received, Congress might elect to examine the circumstances surrounding the President’s decision to declare, or not to declare, a major disaster, and then possibly take legislative action.

*Pro.* Members of Congress concerned with the discretionary authority of the President to decide when federal disaster assistance is to be provided might support legislative options that place reporting requirements on the executive branch and

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<sup>68</sup>P.L. 101-45, 103 Stat. 102.

<sup>69</sup>P.L. 103-50, 107 Stat. 255.

<sup>70</sup>P.L. 101-302, 104 Stat. 243.

<sup>71</sup>P.L. 105-18, 111 Stat. 193, P.L. 106-31, 113 Stat. 96.

<sup>72</sup>P.L. 107-38, 115 Stat. 177.

<sup>73</sup>42 U.S.C. 5172(a)(4), 114 Stat. 1562

facilitate congressional review. Congress could then fully debate and possibly modify declaration decisions made by the President.

*Con.* Congress enacted the disaster assistance statute in 1950 to give declaration authority to the President because it did not wish to delay the provision of federal disaster assistance due to the press of other congressional matters. It may be argued that congressional involvement in the declaration process could lead to inefficiencies and cumbersome communications and decision-making processes.

***Enact New Authority.*** A new statute could be enacted to authorize the President to determine when federal assistance would be provided after any incident attributed to or caused by terrorists. Such new authority could offer broader or different categories of assistance for the response to terrorist attacks, including military or medical assistance not necessarily available after “conventional” disasters. Under such authority, other types of federal assistance could be reconsidered. For example, the mitigation (loss reduction) initiatives in the Stafford Act might be reconsidered to authorize the President to fund prevention and security improvement measures.

The Administration’s proposal to establish a Department of Homeland Security might arguably be one legislative vehicle for such authority. Of particular note, the Administration proposes that the department, when established, “consolidate existing federal government emergency response plans ... into one genuinely all-hazard plan.”<sup>74</sup> Through enactment of this authority Congress might direct the type of assistance to be provided after any attack, the planning mechanism to be followed, and the agency or office responsible for administering the federal effort, regardless of the means used by terrorists. Congress is considering legislation (S. 2452/H.R. 4660, inter alia) to establish the department.

*Pro.* Proponents might argue that enactment of new authority specifically oriented toward the prevention and response to terrorist attacks would enable Congress to tailor assistance to meet the unique needs presented by such threats. For example, the pre-disaster mitigation grant authority approved in the DMA of 2000 specifies that funds “may be used ... to support effective public-private natural disaster hazard mitigation partnerships.”<sup>75</sup> Proponents of change might seek to remove the restrictions on “natural disaster.” Coordination problems experienced by FEMA, as an independent agency, might be resolved if a Cabinet department manages the federal response. Different statutory provisions might be required to help communities mitigate against and recover from terrorist attacks and to involve a range of partnerships, including private, interstate, and possibly international efforts.

*Con.* Opponents of such new authority might argue that the current range of authorities, notably the Stafford Act and the National Emergencies Act, make such a provision unnecessary and could be redundant of existing authority. Also, they might contend that all disasters, regardless of cause, require similar types of response,

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<sup>74</sup>*The Department of Homeland Security*, p. 12.

<sup>75</sup>42 U.S.C. 5133, 114 Stat. 1554.

recovery, and mitigation assistance. The legislation under consideration to establish the Department of Homeland Security should, they might argue, concentrate solely on organizational and administrative matters, and not include policy revisions. Opponents might also voice concern that federal costs could increase dramatically with enactment of new authority.

***Expand Authority to Declare an Emergency.*** Congress might provide limited authority to an administration official, such as the director of FEMA or OHS, to issue an emergency (or other) declaration. Precedents for such authority exist. For years the Administrator of the Small Business Administration (SBA) and the Secretary of the Department of Agriculture have issued disaster declarations pertinent to his or her agency's mission. More recently, Congress has authorized the Secretary of the Army to determine that a Stafford Act emergency exists "with respect to the emergency need" for an outlet from Devils Lake, North Dakota, should water levels rise.<sup>76</sup>

*Pro.* Advocates of this option might argue that an agency head familiar with the specific nature of a terrorist incident might be able to narrowly establish the boundaries of federal assistance to ensure the efficient use of federal resources under specified circumstances.

*Con.* Opponents might argue that only the President, or very few agency heads, should be authorized to exercise such discretionary authority. Also, they might contend that the extension of such authority to non-elected officials is inappropriate, and that federal costs could increase.

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<sup>76</sup>U.S. Congress, Conference Committees, 2000, *Making Appropriations for Energy and Water Development for the Fiscal Year Ending September 30, 2001, and for Other Purposes*, conference report to accompany H.R. 4733, H. Rept. 106-907, 106<sup>th</sup> Cong. 2<sup>nd</sup> sess. (Washington: GPO, 2000), p. 4.

## Eligibility for Stafford Act Assistance<sup>77</sup>

**Issue Summary.** After a major disaster declaration is issued, private not-for-profit organizations may be eligible for Stafford Act grants to reconstruct and repair their damaged facilities that provide such public services as education, medical care, utilities, rehabilitation services, and custodial care. Private, for-profit enterprises may be eligible for disaster assistance loans from the SBA or the Department of Agriculture; however, they are not eligible for Stafford Act grants.

Some contend that private for-profit enterprises that provide necessary services to the public should be eligible for Stafford Act grants. They argue that disasters that overwhelm the resources of state and local governments and not-for-profit organizations can also overwhelm the resources and insurance coverage of for-profit enterprises. The issue is whether Congress should extend Stafford Act grants to certain for-profit enterprises, notably those involved in the maintenance of the nation's critical infrastructure.

**Issue Analysis.** The types and amount of federal disaster assistance have increased significantly since 1950 when the 81<sup>st</sup> Congress authorized the President to direct federal agencies to provide aid to state and local governments.<sup>78</sup> By comparison, the categories of applicants eligible for federal assistance have remained relatively constant. State and local governments, individuals, and families have historically been the primary beneficiaries of federal disaster assistance grants, while private property owners have primarily relied on loans and subsidized insurance.

**Application to Terrorist Attacks.** The terrorist attacks of September 11 in New York City disrupted services provided by utilities, transportation, communication, educational, and medical care facilities. Utility facilities and infrastructure elements were destroyed, alternative instructional arrangements had to be made for students, and medical facilities lost considerable revenue as they shifted resources.<sup>79</sup> As a result, some institutions ineligible for Stafford Act grants face considerable financial hardships.

In an effort to help those organizations, the supplemental appropriations request for fiscal year 2002 submitted by the Bush Administration to Congress requested \$750 million for the Community Development Block Grant (CDBG) program

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<sup>77</sup>Written by Keith Bea, Government and Finance Division.

<sup>78</sup>P.L. [81-]875, 64 Stat. 1109. The 1950 Act also authorized that federal disaster assistance be provided to individuals through the distribution of consumable supplies through the American National Red Cross and by "performing on public or private lands protective and other work essential for the preservation of life and property." 64 Stat. 1110. For a summary of the expansion of federal assistance see: Rutherford H. Platt, "Shouldering the Burden: Federal Assumption of Disaster Costs," in his *Disasters and Democracy* (Washington: Island Press, 1999), pp. 11-46.

<sup>79</sup>For a description of such losses see: Greg Gittrich, "Telecommunications, Electricity Companies Face Daunting Task at Ground Zero," *New York Daily News*, Dec. 11, 2001, p. 42; Jayson Blair, "In an Urban Underbelly, Hidden Views of Terror's Toll," *The New York Times*, Oct. 14, 2001, p. A32.

administered by the Department of Housing and Urban Development (HUD). In the request the Administration noted that CDBG funds:

may be used for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001 in New York City and for reimbursement to the state and City of New York for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes...<sup>80</sup>

Both the House and Senate have agreed with this request, as reflected in committee reports<sup>81</sup> and the text of the engrossed House provision, as follows:

For an additional amount for 'Community Development Fund,' as authorized by title I of the Housing and Community Development Act of 1974, as amended, for emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, \$750,000,000, to remain available until expended: Provided, That the State of New York, in cooperation with the City of New York, shall, through the Lower Manhattan Development Corporation, distribute these funds: Provided further, That such funds may be used for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001, in New York City and for reimbursement to the State and City of New York for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes: Provided further, That the State of New York is authorized to provide such assistance to the City of New York: Provided further, That in administering these funds and funds under section 108 of such Act used for economic revitalization activities in New York City, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such waiver is required to facilitate the use of such funds or guarantees: Provided further, That such funds shall not adversely affect the amount of any formula assistance received by the State of New York, New York City, or any categorical application for other Federal assistance: Provided further, That the Secretary shall publish in the Federal Register any waiver of any

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<sup>80</sup>U.S. President (Bush), Emergency Funding Request Submission to Congress for FY2002, p. 48, at: [<http://w3.access.gpo.gov/usbudget/fy2003/pdf/5usattack.pdf>], visited May 3, 2002.

<sup>81</sup>U.S. Congress, House Committee on Appropriations, *Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, report to accompany H.R. 4775, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., H. Rept. 107-480 (Washington: GPO, 2002), p. 54; U.S. Congress, Senate Committee on Appropriations, *Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, report to accompany S. 2551, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Rept. 107-156 (Washington: GPO, 2002), p. 99.

statute or regulation that the Secretary administers pursuant to title I of the Housing and Community Development Act of 1974, as amended, no later than five days before the effective date of such waiver: Provided further, That the Secretary shall notify the Committees on Appropriations on the proposed allocation of any funds and any related waivers pursuant to this section no later than five days before such allocation.<sup>82</sup>

Some of the most heavily affected entities included Consolidated Edison (Con Ed) and Verizon, the telecommunications corporation. The reported financial distress of Con Ed and Verizon reportedly stems, at least in part, from deficient insurance coverage. One news account reported that Con Ed had insured two destroyed substations for \$70 million, requiring “an estimated \$340 million in additional costs. Verizon has estimated that its insurance will cover \$1 billion in damage, leaving \$380 million in additional costs.”<sup>83</sup>

In addition to restoring lost facilities, the funding deficiency may be attributed to the increased costs associated with improving the utility infrastructure after the disaster. For example, one report stated that Con Ed “is now digging nearly seven miles of trenches through the financial district to create a permanent grid, which it expects to have operating by May. The substations were insured for about \$70 million; Con Ed estimates that the work will cost a total of about \$400 million.”<sup>84</sup> Federal assistance was requested, according to news reports, to forestall adverse economic consequences, including increases in rates associated with reconstruction.

In addition to the utilities, for-profit educational and medical facilities suffered losses. Some of the costs incurred by educational institutions apparently were associated with the placement of students in alternative educational settings.<sup>85</sup> Medical facilities lost an estimated \$340 million as they shifted resources to meet the needs of the disaster victims, clean up airborne particles from building interiors, and address other needs.<sup>86</sup>

**Background.** For decades Congress has authorized federal assistance to rebuild or repair facilities owned by organizations that provide public services. The 1950 statute authorized “emergency repairs to and temporary replacements of public

<sup>82</sup>H.R. 4775, 107<sup>th</sup> Congress.

<sup>83</sup>Jayson Blair, “Con Ed Asks Permission to Hold Rebates,” *New York Times*, March 20, 2002, p. A24.

<sup>84</sup>Neela Banerjee, “In Tumultuous Year, Con Ed Basks in Its Quiet Success,” *New York Times*, Dec. 26, 2001, p. C1.

<sup>85</sup>Fred Bruning, “Enduring Agony,” *Newsday*, March 10, 2002, p. A07. Joyce Purnick, “In Schools, a Hidden Toll of Sept. 1,” *Associated Press*, May 13, 2002; Ellen Yan, “FEMA Agrees to Aid NYU,” *Newsday*, May 16, 2002, p. A28.

<sup>86</sup>Judith Messina, “Hospitals’ Chronic Pain Gets Worse; Surgery Cancellations, Unforeseen Expenses from WTC Disaster Create Revenue Drain,” *Crain’s New York Business*, Oct. 15, 2001, p. 50; Margaret Ramirez, “Report: Cost to Hospitals \$340M,” *Newsday*, Oct. 5, 2001, p. A07; Greater New York Hospital Association, “The Fiscal Impact of the World Trade Center Attack on New York Hospitals,” at: [<http://www.gnyha.org>], visited May 17, 2002.



facilities of local governments.”<sup>87</sup> Since then Congress has enacted provisions that have expanded the eligibility of organizations for such assistance, adhering to the general principle that public entities are eligible for grants while corporations are eligible for loans.<sup>88</sup> For example:

- The Disaster Relief Act of 1966 authorized grants to repair or reconstruct “any project of a state, county, municipal, or other local government agency for flood control, navigation, irrigation, reclamation, public power, sewage treatment, water treatment, watershed development, or airport construction” damaged or destroyed.<sup>89</sup> The Act also authorized the Secretary of Agriculture to assist nongovernmental entities, specifically to: “make or insure loans to associations, including corporations not operated for profit and public and quasi-public agencies, for the acquisition, construction, improvement, replacement, or extension of waste disposal systems and other public facilities damaged or destroyed as a result of a major disaster...”<sup>90</sup>
- The Disaster Relief Act of 1970 created new authority that authorized the President to direct federal agencies to provide assistance by “making repairs to, restoring to service, or replacing public facilities (including street, road, and highway facilities) of state and local governments ...”<sup>91</sup> This statute was amended in 1971 to authorize grants to be made for the repair or reconstruction of “any medical care facility which is owned by an organization exempt from taxation ... which is damaged or destroyed by a major disaster.”<sup>92</sup>
- The Disaster Relief Act of 1974 superseded the provisions of the 1970 Act and expanded the definition of “local government” (and therefore eligibility for public facility repair grants) to include “any Indian tribe or authorized tribal organization, or Alaska Native village or organization.”<sup>93</sup>
- The 1988 amendments authorized aid to private nonprofit “educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.”<sup>94</sup>

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<sup>87</sup>Sec. 3, P.L. [81-]875, 64 Stat. 1110.

<sup>88</sup>An exception to that general principle was made in the 1971 amendment to the Disaster Relief Act of 1970 that authorized grants for private medical care facilities. See summary of the 1970 Act.

<sup>89</sup>Sec. 9, P.L. 89-769, 80 Stat. 1320.

<sup>90</sup>Sec. 6(b), The Disaster Relief Act of 1966, 80 Stat. 1318.

<sup>91</sup>Sec. 203(a)(4)(B), The Disaster Relief Act of 1970, 84 Stat. 1747.

<sup>92</sup>P.L. 92-210, 85 Stat. 742-43.

<sup>93</sup>Sec. 102(6), The Disaster Relief Act of 1974, 88 Stat. 144.

<sup>94</sup>Sec. 103(f), The Disaster Relief and Emergency Assistance Amendments of 1988, 102 (continued...)

The decades-long trend toward expanding eligibility for facility repair and replacement authority shifted in 2000 when Congress amended the Stafford Act through amendments titled “Streamlining and Cost Reduction.” One amendment requires that the owner or operator of a private non-profit facility seeking assistance that does not provide “critical services” apply first to the Small Business Administration (SBA) for a disaster loan. If the SBA determines the applicant is ineligible for such a loan or if the maximum amount of the loan has been granted and further needs remain unmet, the owner of the facility might receive grant assistance. The amendment defines critical services as “power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.”<sup>95</sup>

While some disasters over the years may have led some to quietly seek the extension of grant-in-aid eligibility to affected corporations, the ice storms that paralyzed much of New England in 1998 set the stage for perhaps the most public debate over the ineligibility of for-profit entities for Stafford Act assistance. Utility companies in the New England states lost millions of dollars due to the collapse of electrical transmission lines weighed down by ice. Public utilities were eligible for assistance under the Stafford Act, but the commercial (for-profit) utilities were not eligible. In response to calls for assistance from the commercial utility companies, Congress appropriated \$130 million for the CDBG program.<sup>96</sup> The statute directed that these funds were to be disseminated through the CDBG program “for disaster relief, long-term recovery, and mitigation ... except for those activities reimbursable by or for which funds are made available” by FEMA, SBA, or the Army Corps of Engineers.<sup>97</sup>

A decision by the HUD secretary to allocate some of the \$130 million to states outside New England affected by other disasters and “just” \$2 million to Maine evoked considerable controversy. According to one news report “Maine’s delegation in Congress called the federal grant ‘meager’ and ‘an outrageous betrayal’ of Congress’ intent for the money.”<sup>98</sup> Secretary Andrew Cuomo of HUD reportedly met with Members of Congress, and a resolution to the matter was reached through appropriations and the allocation of additional money for Maine utilities.<sup>99</sup>

The issue of appropriating CDBG funds to assist a for-profit corporation affected by a major disaster came before Congress before the September 11 attacks. Flooding caused by Tropical Storm Allison in June 2001 inundated much of the

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<sup>94</sup>(...continued)  
Stat. 4690.

<sup>95</sup>Sec. 205(a), Disaster Mitigation Act of 2000, 114 Stat. 1562.

<sup>96</sup>P.L. 105-174, 112 Stat. 76.

<sup>97</sup>Ibid.

<sup>98</sup>Steve Campbell, “Ice Storm Aid Pittance Seen as ‘Betrayal’,” *Portland Press Herald*, Nov. 22, 1998, at: [<http://www.portland.com/>], visited Nov. 23, 1998.

<sup>99</sup>“Congress Grants Maine Utilities More Funds for Damage from 1998 Ice Storm,” *Electric Utility Week*, June 7, 1999, p. 14.

Texas Medical Center (TMC), an administrative entity that provides support to hospital and medical facilities in the Houston area. FEMA officials determined that TMC facilities that provide medical services were eligible for facility repair grants, but that the administrative facility was not. FEMA's ruling was upheld on appeal.<sup>100</sup> In recent action on the supplemental appropriations legislation for FY2002, Congress approved a provision to authorize reimbursement to the TMC.<sup>101</sup> An amendment to extend similar aid to New York colleges affected by the September 11 attacks reportedly was rejected by the House.<sup>102</sup>

### **Policy Options.**

***Maintain the Status Quo.*** Federal disaster policies generally authorize loans and subsidized insurance for private property owners recovering from a major disaster and grants for facilities owned by public organizations. Some may argue that this distinction between categories of applicants should continue to be recognized, or await the results of ongoing congressional study before changes are made.<sup>103</sup>

***Pro.*** Insurance has traditionally been the primary source of assistance for the private sector after a disaster strikes. For-profit companies can arguably factor the costs of that insurance into the prices they charge for goods and services, and can generally obtain private and federal loans, if necessary, to supplement the insurance. Congress might consider, on a case-by-case basis, the needs of for-profit entities affected by a disaster and appropriate CDBG funds as needed.

***Con.*** Some would argue that congressional debate after past major disasters indicates that the current policy is deficient. Repair and reconstruction costs, in large part, will be passed on to ratepayers or consumers, and services may be lost if for-profit entities declare bankruptcy or curtail significant operations because they remain ineligible for federal aid beyond loans and subsidized insurance. Also, Congress likely will continue to legislate assistance on a case-by-case basis, thereby altering the longstanding intent of the Stafford Act to establish a continuing assistance program that is uniformly administered and does not require congressional debate on victims' needs following each disaster.

***Qualify Certain For-Profit Entities.*** Pending before the 107<sup>th</sup> Congress is legislation (H.R. 3239) that would include private for-profit medical facilities in the Stafford Act definition of private nonprofit facility to ensure the continuity of

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<sup>100</sup>Telephone conversation with Ms. Joanne Skinner, congressional liaison staffer, Houston Disaster Field Office, May 3, 2002. For background see: Alan Bernstein, "TMC Corp. Denied Flood Funds; FEMA: Hospital Coordinator Does Not Fit Nonprofit Profile," *Houston Chronicle*, Sept. 22, 2001, p. A31.

<sup>101</sup>"That notwithstanding any other provision of law, the Texas Medical Center may be provided FEMA Public Assistance and Hazard Mitigation grants as an agent for eligible applicants." H.R. 4775 (Version as placed on Calendar in the Senate), 107<sup>th</sup> Congress.

<sup>102</sup>Ellen Yan, "House Move to Beef Up 9/11 School Aid," *Newsday*, May 10, 2002, p. A16.

<sup>103</sup>Diana B. Henriques, "Senate Panel Asks G.A.O. to Review FEMA's Role," *The New York Times*, May 4, 2002, p. A12.

medical care following a major disaster. Similar legislation might be considered to make for-profit utility companies or other types of organizations eligible for Stafford Act grants.

*Pro.* Past experience indicates the high costs of replacing lost infrastructure, restoring disrupted services, or compensating organizations for lost revenue if for-profit companies affected by a disaster do not receive federal assistance. Proponents believe the federal government is a necessary partner in funding such improvements that, they argue, benefit the national economy.

*Con.* Including for-profit companies in the definition of entities eligible for Stafford Act grant assistance would increase federal disaster assistance expenditures, possibly by a substantial amount. Such costs would increase considerably if for-profit companies other than utilities or medical service industries that provide arguably “essential” services or goods sought to be included. There may also be a question of whether covered for-profit utilities would decrease the amount of insurance they carry once they are eligible for grants.

**Amend the “Critical Services” Provision.** The Disaster Mitigation Act of 2000 listed utility services and emergency medical care as critical services that do not require facility owners to apply first for SBA loans. The Act also grants the President discretion in making such decisions.<sup>104</sup> Other services deemed essential or critical might be added to the list, such as education systems, providers of counseling assistance, or those that feed or shelter the homeless. As another option, the President could be granted greater discretion to identify such services on a case-by-case basis.

*Pro.* Some essential services are provided by for-profit as well as non-profit organizations. The delivery of some of those services, even administrative services, are important as communities attempt to return to business as usual after a terrorist attack or other disaster. Congressional consideration of the unique needs of certain disaster victims and of stricken communities may lead to the conclusion that greater latitude should be given administration officials in identifying critical services.

*Con.* Federal disaster assistance costs would escalate if the cost savings provisions of the 2000 Act were stricken. If the legislation were amended to authorize administration officials to use greater discretion in deciding among “essential” or “critical” services provided by for-profit or other non-profit institutions, administration officials would be pressed to continue to expand federal grant assistance. Decisions on where to draw the line could be colored by political considerations.

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<sup>104</sup>“The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—“(i) the facility provides critical services (as defined by the President) in the event of a major disaster...” Section 205, P.L. 106-390, 114 Stat. 1562.

## Federal Coordination of Recovery Assistance<sup>105</sup>

**Issue Summary.** As a result of the catastrophic destruction of property in lower Manhattan after September 11, New York City began a large-scale, long-term recovery effort. The neighborhood is to be reconfigured, new infrastructure set in place, and buildings repaired or newly constructed. FEMA and other federal agencies, charged with providing recovery assistance after major disasters, will contribute billions of dollars to the project and coordinate efforts with state and local agencies.

Some progress has been made in rebuilding the neighborhood despite the extent of damage that occurred and the complexities of rebuilding a large part of lower Manhattan. However, the magnitude of the destruction in New York City, the projected costs, and the significance of this project to the nation present a new challenge to federal officials. The issue before Congress is whether current federal authorities and plans are adequate to coordinate and monitor federal and non-federal rebuilding activities in New York City, and, by extension, long-term recovery efforts that may be required in other cities after future terrorist attacks.

**Issue Analysis.** Some catastrophic disasters have struck major cities in the United States with devastating costs in life and property. The flooding of Galveston in 1900, the San Francisco earthquake of 1906, and more recently, the destruction of part of Los Angeles in 1994 from the Northridge earthquake resulted in the remaking of large parts of these urban centers and the coordination of federal and non-federal resources. Whether the catastrophe is caused by an earthquake, flood, or terrorist attack, disaster recovery involves decisions on land use planning, neighborhood versus regional or national concerns, and the involvement of a host of interested parties such as citizens, businesses, property owners, civic associations, and elected officials.

**Application to Terrorist Attacks.** In coordinating federal assistance to New York City, FEMA will work with a joint city-state corporation created in November 2001 to oversee the recovery process—the Lower Manhattan Development Corporation (LMDC).<sup>106</sup> The LMDC, in partnership with the Port Authority of New York and New Jersey, is responsible for planning the long-term redevelopment of affected portions of lower Manhattan and coordinating local, state, and federal assistance. The corporation is led by a 16-member board, has a full-time staff, and has nine advisory committees, including one committee that represents the families of victims. The LMDC will fund its activities with state and federal money.

As the LMDC and the Port Authority coordinate New York City's recovery efforts, Congress might consider whether federal authorities and plans are adequate for coordinating assistance to a large-scale, long-term recovery effort following terrorist attacks. It may be that they are not adequate to address the large scale and long duration of New York City's recovery. Despite the considerable experience of

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<sup>105</sup>Written by Ben Canada, Government and Finance Division.

<sup>106</sup>The Lower Manhattan Development Corporation's Web site is [<http://www.renewnyc.com>].

FEMA and other federal agencies in coordinating assistance, federal agencies are not accustomed to a recovery project of this magnitude. Should an even more devastating terrorist attack occur, such as one that involved the contamination of a commercial district with a CBRN device, the recovery complexities could multiply.

Some specific questions Congress might address as it considers federal coordination efforts after terrorist attacks include the following:

- Should the Stafford Act, which governs most federal disaster assistance, be amended to better address long-term recovery issues?
- How will federal agencies coordinate efforts with the LMDC (or similar entities in other cities) and implement recovery activities in a timely manner?
- Will federally funded recovery projects receive sufficient public input during the planning process? How will the concerns and interests of some sectors (e.g. low-income residents) be balanced with those of others (e.g., property owners or developers)?
- Should other metropolitan communities be encouraged to devote more resources to recovery planning in anticipation of a disaster or potential attack?

FEMA has not yet released an after-action report on federal recovery activities in New York City.<sup>107</sup> Federal officials, however, have commented on the effectiveness of ongoing federal recovery efforts. For example, FEMA Director Joe Allbaugh has expressed his belief that federal coordination efforts have been successful to date. In congressional testimony, he said that FEMA has received support from the Departments of Agriculture, Defense, Energy, Justice, and Transportation, and other agencies.<sup>108</sup>

Another FEMA official expressed support for the current authorities provided by the Stafford Act and the guidance provided in the Recovery Annex of the *Federal Response Plan*. Marianne Jackson, FEMA's deputy federal coordinating officer for the World Trade Center disaster, testified before the Senate Committee on Environment and Public Works that she believed the Stafford Act provided sufficient authority for FEMA to effectively carry out response and recovery activities. She also expressed support for existing plans:

Since 1992, and again in response to the tragic events on September 11, 2001, the Federal Response Plan has proven to be a solid framework time and time again for managing major disasters and emergencies regardless of cause.... The

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<sup>107</sup>FEMA, as well as state and local governments, typically publish after-action reports following the response and recovery phases of a disaster. The reports generally offer an overview of activities and an evaluation of the response and recovery efforts.

<sup>108</sup>Statement of Joe M. Allbaugh, director of U.S. Federal Emergency Management Agency, U.S. Congress, Senate Committee on Environment and Public Works, *FEMA Response to September 11, 2001 Attacks*, hearings, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., Oct. 16, 2001.

framework is successful because it builds upon the existing professional disciplines and relationships among the participating agencies.<sup>109</sup>

A number of observers, however, have criticized the coordination of federal assistance following the terrorist attacks. Some have faulted FEMA and the EPA with failing to coordinate the reporting of air quality in lower Manhattan, a factor that may affect rebuilding efforts as residents and businesses contemplate relocation.<sup>110</sup> Others have criticized FEMA's communication with nonprofit charities, stating that a lack of coordination has resulted in eligibility problems for attack victims and the distribution of funds that would facilitate economic recovery.<sup>111</sup> FEMA has also received criticism for the timeliness and interpretation of eligibility regulations in some of its programs, notably mortgage and rental assistance for those who face eviction or the loss of residences due to the effects of the attack.<sup>112</sup>

Some have expressed concern that the federal government will not sufficiently assist the city with the replacement of lost infrastructure and will not provide assistance over the duration of the recovery. They have specifically cited the need for federal funding of transportation projects, including replacing demolished subway tunnels and stations and extending train lines that were not damaged in the attacks.<sup>113</sup>

Still others questioned the methods by which public participation will be integrated into the recovery planning process. Some have noted some conditions that may inhibit public participation, including an accelerated design process established by the LMDC, along with the potentially competing interests of family members of victims, land developers, local residents, business owners, and public officials.<sup>114</sup>

**Background.** Given the devastation in New York City and the worse devastation that could result from a terrorist attack involving a weapon of mass

<sup>109</sup>Statement of Marianne Jackson, deputy federal coordinating officer, U.S. Federal Emergency Management Agency, U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, and Climate Change, *Impacts on Air Quality of the September 11<sup>th</sup> Attacks and Possible Health Effects in the Area of the World Trade Center*, hearings, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Feb. 11, 2002.

<sup>110</sup>This issue is discussed in the section of this report titled "Environmental Hazard Assessment and Communication." See also: Stevenson Swanson, "Panel Told NYC Was Misled on Air Quality," *Chicago Tribune*, Feb. 12, 2002, p. 11; Associated Press State and Local Wire, "Data on Toxic Dust Never Made It to Ground Zero," February 10, 2002.

<sup>111</sup>Dana B. Henriques and David Barstow, "Change in Rules Barred Many from Sept. 11 Disaster Relief," *New York Times*, April 26, 2002, p. A1.

<sup>112</sup>Raymond Hernandez, "FEMA's Pace on 9/11 Aid Is Criticized," *New York Times*, June 14, 2002, p. A1. Also See: David Barstow and Diana B. Henriques, "Sorting Out Why U.S. Agency Spent So Little," *New York Times*, April 26, 2002, p. A13.

<sup>113</sup>Steven Malanga, "How to Rebuild New York," *City Journal*, Autumn 2001, vol. 11, no. 4, at: [[http://www.city-journal.org/html/11\\_4\\_how\\_to\\_rebuild.html](http://www.city-journal.org/html/11_4_how_to_rebuild.html)], visited June 11, 2002.

<sup>114</sup>Monika Iken, "WTC Agency Ignores Families and Reality," *New York Daily News*, May 6, 2002 and Edward Wyatt, "Blueprint for Ground Zero Begins to Take Shape," *New York Daily News*, May 4, 2002.

destruction (WMD), Congress may examine past practices and consider new mechanisms for coordinating assistance. At least one such examination has been reported to have occurred in the past. Following the Northridge earthquake of 1994, some observers believed that federal assistance programs were not suitably structured for a large-scale disaster. In a 1996 congressional hearing on the federal government's response to the earthquake, one California official stated:

Because of the inherent technical complexities of the seismic damage, the Northridge earthquake has highlighted limitations in the current structure of federal disaster assistance regulations and policies. I believe that federal disaster assistance policies, particularly as they apply to damaged public structures, need to be reformed. Quite simply, current programs are too costly to administer, too often applied in an inconsistent and arbitrary manner, placing FEMA in roles and decisions that sometimes directly conflict with the authority of local and state governments.<sup>115</sup>

As the recovery process in New York City proceeds, it is possible that the terrorist attacks of September will lead to another examination of federal disaster policy and, specifically, coordination of recovery assistance.

Following a major disaster declaration, affected areas became eligible for a wide array of federal recovery assistance. The recovery phase typically begins when the response phase, which involves search and rescue and other lifesaving activities, is nearly complete or has ended. The "Recovery Annex" in the *Federal Response Plan* describes recovery activities as "... actions by disaster victims that enable them to begin the process of rebuilding their homes; replacing property; resuming employment; restoring their businesses; permanently repairing, rebuilding, or relocating public infrastructure; and mitigating future disaster losses."<sup>116</sup> Congress has authorized recovery assistance for individuals and families, small businesses, and state and local governments through several statutes, including the Stafford Act.

The Stafford Act authorizes FEMA to coordinate all federal assistance provided to eligible recipients following a disaster declaration. Other agencies administering recovery programs include the Small Business Administration (SBA) and the Departments of Justice and Labor. In addition, many other agencies administer general assistance programs that may be applicable in disaster situations. In general, federal recovery programs do not have public participation requirements other than requirements to provide public notice.<sup>117</sup>

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<sup>115</sup>Statement of Richard Andrews, director, Office of Emergency Services in: U.S. Congress, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, *The Government's Response to the Northridge Earthquake*, hearings, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Jan. 19, 1996. pp. 65-66.

<sup>116</sup>U.S. Federal Emergency Management Agency, *Federal Response Plan* (Washington: April 1999), p. RF-1, available at [<http://www.fema.gov/r-n-r/frp/>], visited April 8, 2002.

<sup>117</sup>An exception concerns the authority of the EPA regarding a release or threatened release that might pose an imminent and substantial threat to public health or welfare or to the environment. EPA has prepared a public participation guidance for coordinators. For an overview of the authority, delegation of responsibility, and summaries of directives see:

(continued...)



The “Recovery Annex” of the *Federal Response Plan* includes guidance for federal recovery activities authorized by the Stafford Act. The Annex emphasizes that the affected state and local governments are ultimately responsible for setting recovery priorities, developing plans, and coordinating assistance, and that federal resources are meant to “... complement and supplement State, local, and private resources to facilitate recovery.” Furthermore, the Annex acknowledges FEMA as the lead federal agency in the recovery process and instructs other agencies to work with FEMA in delivering recovery assistance.<sup>118</sup> The “Recovery Annex” does not address long-term recovery issues or public participation in planning federally funded projects.<sup>119</sup>

**Policy Options.** If Congress examines the existing authorities and plans governing federal assistance in the context of recovery on a large scale from terrorist attacks, it might consider such options as the following.

**Maintain the Status Quo.** Congress might maintain the existing authorities and plans governing the coordination of federal assistance. While certain aspects of federal recovery efforts have been criticized, changes in statutory authority may not be necessary. The city’s long-term recovery, however, is in its early stages and evaluations of federal coordination have not been completed.

**Pro.** Arguably, the Stafford Act already gives the President sufficient authority and flexibility to address unique needs that might arise during recovery from terrorist attacks. It is possible that amending the Act in a way that directs the President to use a specific plan or process could decrease the President’s flexibility in bringing federal resources to bear after terrorist attacks.

**Con.** There have been a number of criticisms about aspects of the recovery process. Coordination of information among federal agencies, nonprofits, and individuals is the subject of much of the criticism. Some applicants and elected officials have questioned federal agencies’ determination of eligibility for assistance. The existing authorities and plans might not be appropriate for recovery that is long-term and large-scale. Changes might better ensure coordination of agencies’ activities over a multi-year recovery effort after communities suffer from a terrorist attack.

**Create a Special Coordinating Office.** Congress might create or authorize the President to create a special office for coordinating assistance after certain disasters when lengthy and extensive federal involvement is expected. Congress most recently pursued this option following the Cerro Grande fires in New Mexico in 2000. After that disaster, Congress created the Office of Cerro Grande Fire Claims within FEMA and charged it with overseeing federal assistance to victims.<sup>120</sup> Similarly, if a special office were authorized for recovery activities in New York

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<sup>117</sup>(...continued)

[<http://es.epa.gov/oeca/osre/980210.html>], visited June 17, 2002.

<sup>118</sup>Ibid., pp. RF-4-RF-7.

<sup>119</sup>Ibid., pp. RF-8-RF-11.

<sup>120</sup>P.L. 106-246; 114 Stat. 583-590.

City, it could represent federal interests and provide a continuing presence for the needs of the city and its residents.

Officials from the LMDC reportedly have stated that the recovery of New York City will take several years.<sup>121</sup> One task Congress might assign to a special coordinating office would be to explore means of expediting the delivery of federal assistance, including the advantages and disadvantages of returning federal offices and employees to Lower Manhattan.<sup>122</sup> For example, some observers have suggested that some assessments required by federal, state, and local governments, including environmental impact statements, could be jointly conducted, and that procedures for granting building permits could be combined.<sup>123</sup>

A special office also could undertake and coordinate non-recovery activities that might be required solely in the context of terrorist attacks, such as improving warning systems and coordinating security and law enforcement resources. Congress could charge a special office with facilitating communication between federal law enforcement agencies and state and local officials. Federal officials have warned that terrorists may again attempt attacks on New York City landmarks and “high-visibility” targets.<sup>124</sup> A special office might include a law enforcement branch with liaisons from the Federal Bureau of Investigation, Coast Guard, and other agencies, as needed. The framework envisioned in the proposed Department of Homeland Security might be applied to or considered in developing such an option.

Another option would be to delegate to the State of New York a degree of decision-making authority over the federal assistance it receives. Congress could delegate specific authorities to the state (which the state might elect to pass to the LMDC), such as authority to coordinate administrative review processes, award grants, and request funds directly from federal agencies. Congress enacted a similar option in the 1974 amendments to the Public Works and Economic Development Act of 1965.<sup>125</sup> The amendments provided for the creation of “recovery planning councils” following a disaster. The councils were required to include at least one official each from the state government and the federal government, but they had to maintain a majority of local government officials. The law gave them authority to develop recovery plans and request funds from federal agencies (with the governor’s consent). It also authorized the President to fund the activities of the recovery planning councils, including the provision of funds for councils to make recovery

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<sup>121</sup>Edward Wyatt, “A Nation Challenged: Ground Zero: Years of Work Underground Before Steel Reaches Skyward,” *The New York Times*, March 27, 2002, p. A12.

<sup>122</sup>Associated Press, “Elected Officials Demand Return of Customs Service to Lower Manhattan,” June 17, 2002.

<sup>123</sup>Stephen L. Kass and Jean M. McCarroll, “Rebuilding Lower Manhattan,” *New York Law Journal*, Oct. 26, 2001, pp. 3-4.

<sup>124</sup>Dan Barry and Al Baker, “Security Tighter in New York After Vague Terrorist Threat,” *The New York Times*, May 22, 2002, p. A2; Philip Shenon, “Suicide Attacks Certain in U.S., Mueller Warns,” *The New York Times*, May 21, 2002, p. A3.

<sup>125</sup>P.L. 93-288; 88 Stat. 160.

grants and loans.<sup>126</sup> Congress, however, never appropriated money for the councils, and the provision was stricken in 1988.

A bill introduced in the Senate, S. 1624, proposes an Office of World Trade Center Attack Claims. Under this proposal, the office would oversee only claims from individuals, families, and small businesses. The bill does not address the replacement of public infrastructure and long-term economic recovery issues.

*Pro.* A special office, with its own authorities and budget, might ensure that federal resources are used more efficiently and effectively throughout the recovery process. It could also offer state and local officials a single point-of-contact for collecting information and resolving issues. Congress could also instruct the office to undertake specific activities to assist recovery efforts and ensure that congressional objectives are attained, such as administering the appeals process for assistance programs, monitoring for fraud, identifying opportunities for mitigation, and evaluating the effectiveness of federal programs.

*Con.* Given that existing federal plans already establish a framework for coordinating federal recovery efforts, a special office might be considered unnecessary. FEMA officials have expressed support for the existing authorities and framework. This option could possibly disrupt existing relationships among federal, state, and local agencies. Lastly, such an office might or might not fit the design that Congress adopts in creating a Department of Homeland Security.

***Expand Waiver Authority.*** Statutory and administrative requirements placed on disaster assistance programs may at times delay the delivery of assistance. Providing federal agencies the authority to waive selected requirements could facilitate the coordination and distribution of assistance to recipients.

The Stafford Act grants federal officials discretion in waiving administrative regulations for major disaster situations. If a state or locality is unable to satisfy an administrative regulation due to the consequences of a major disaster, federal officials may waive or modify such requirements that might impede the delivery of federal assistance.<sup>127</sup> Some observers have suggested that federal agencies should have comparable authority to modify regulations to expedite the delivery of assistance in lower Manhattan. For example, they suggest agencies could simplify permitting processes, shorten public comment periods, or minimize reporting requirements.<sup>128</sup>

The Stafford Act also affords FEMA statutory flexibility in the public assistance program. States and localities have the option of accepting a contribution of up to 75% of the estimated cost of a proposed project in lieu of a matching grant for

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<sup>126</sup>P.L. 93-288, sec. 802(b), 802(c)(2), and 803(a); 88 Stat. 160.

<sup>127</sup>42 U.S.C. 5141.

<sup>128</sup>“Rebuilding Lower Manhattan,” pp. 2-3.

reconstruction.<sup>129</sup> Should state and local officials determine that the community would be better served by not repairing or replacing damaged or destroyed public facilities, they might apply for an in-lieu contribution rather than seek reimbursement for the cost of replacement or repairs. Congress might consider extending such authority to other federal assistance programs, such as the Individual Assistance program, SBA disaster loans, and CDBG, which limit federal assistance to specific activities. Such an option could allow individuals, small businesses, and governments to better adapt federal assistance to meet their unique needs. On the other hand, it could generate problems in assuring accountability of federal funds.

A related option would be to allow federal agencies, upon request from a recipient government, to deobligate funds for one activity and obligate them to another activity. Some observers have suggested that this option would allow New York City and New York state more flexibility in using federal funds for recovery projects. For example, one specific recommendation from observers is to use funds remaining from the debris removal phase (completed under budget and ahead of schedule) for transportation projects. The latter might be the most costly of the city's recovery activities.<sup>130</sup>

While plans are still under discussion, it appears that city and state officials in New York might seek flexibility within the requirements of federal programs. The LMDC stated in its preliminary blueprint that it will not seek to replicate the former urban landscape, but design a new lower Manhattan that will better accommodate mass transit systems, encourage residential development, promote commercial enterprises, and create urban parks.<sup>131</sup> Existing federal requirements that would bind grantees to past development patterns or practices might be reconsidered.

*Pro.* In some cases, waiving or modifying certain statutory and regulatory requirements could expedite the delivery of federal assistance, which could subsequently expedite the recovery process. Also, it could allow states and localities to better adapt federal assistance to their particular recovery plans.

This option might also allow federal agencies to better assist areas threatened by terrorism. The existing authorities governing disaster assistance might not be appropriate for dealing with terrorist attacks, because many of the programs were created to respond to natural disasters, which typically strike a given area and then dissipate. Terrorist attacks, however, could be continuing incidents with lasting effects that require different types of aid. Multiple or successive attacks could occur in one community, possibly requiring greater flexibility in recovery efforts.

*Con.* If federal agencies have discretion in waiving or modifying statutory requirements, federal recovery programs might not be applied pursuant to

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<sup>129</sup>42 U.S.C. 5172.

<sup>130</sup>Edward Wyatt and Randy Kennedy, "\$7.3 Billion Vision to Rebuild Transit Near Ground Zero," *The New York Times*, April 20, 2002, p. A1.

<sup>131</sup>Lower Manhattan Development Corporation, "Principles and Preliminary Blueprint for the Future of Lower Manhattan," April 9, 2001, available at the LMDC Web site, [<http://www.renewnyc.com>], visited June 10, 2002.

congressional policy objectives. Compliance with congressional economic development or environmental protection goals could be disregarded or minimized in favor of satisfying state and local recovery needs. Expanding waiver authority could also inhibit the ability of federal officials and Congress to evaluate the efficiency and effectiveness of assistance programs. It could also create problems in tracking and accounting for funds.

**Establish Requirements for Public Participation.** Given the large number of stakeholders in New York City's recovery, the complications of recovering from other terrorist attacks, and the substantial amount of federal assistance that will fund recovery projects, Congress might establish requirements for public participation.

The LMDC and the Port Authority have established an accelerated planning schedule. The two organizations expect to have six proposed land-use plans approved by July 1, 2002, and a final plan in place by December 1, 2002. Some observers have stated that this schedule does not allow enough time for planning officials to receive public input or for designers to formulate proposals.<sup>132</sup> The LMDC and Port Authority, however, have released a schedule of public forums and comment periods that will continue through the remainder of 2002 in order to obtain viewpoints of many interested parties.<sup>133</sup>

Other observers have criticized city and state officials in New York for establishing an LMDC governing board that they believe is not conducive to public participation. Specifically, stakeholder groups such as families of victims and local residents have argued that the LMDC board should contain representatives of their groups. At the time of this writing, the board did not include a family member of a victim or a resident of lower Manhattan. The LMDC, however, has attempted to incorporate input from these and other groups by forming advisory councils exclusively for such groups as victims' families, residents, and small business owners. Some observers believe that excluding these stakeholder groups from the LMDC's board is inappropriate.<sup>134</sup>

*Pro.* Establishing requirements for public participation might better ensure that recipients of federal assistance, including New York state agencies, New York City, and the LMDC, receive and consider the range of viewpoints during the various phases of the city's recovery. It could also ensure that planning officials consider input from the broad range of stakeholders. Establishing such requirements could also serve as a model for public participation in future large-scale recovery efforts.

*Con.* It is possible that setting requirements for public input could lengthen the planning process since planning officials might have to receive and analyze more

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<sup>132</sup>William Neuman, "What's the WTC Rush?" *New York Post*, May 7, 2002, at: [<http://www.nypost.com/news/regionalnews/47301.htm>], visited June 11, 2002.

<sup>133</sup>Available at LMDC web site: [<http://www.renewnyc.com>], visited May 24, 2002.

<sup>134</sup>Iken, "WTC Agency Ignores Families," May 6, 2002; Paul Goldberger, "Groundwork: How the Future of Ground Zero Is Being Resolved," *The New Yorker*, May 20, 2002, pp. 86-95.

suggestions from citizens representing competing interests. Some observers have suggested that, with such a broad range of stakeholders, a consensus approach to lower Manhattan's new design ultimately might not satisfy some of the city's goals such as economic revitalization and construction of an appropriate memorial to victims.<sup>135</sup> It might also be characterized by some as substituting federal judgements for those more appropriately made at the state and local levels.

**Promote Pre-Disaster Recovery Planning.** Congress has authorized the President to assist states in preparing for disasters, including planning for recovery of damaged or destroyed facilities.<sup>136</sup> At present, FEMA encourages states to include recovery planning in their comprehensive plans. Should Congress decide further effort is needed, it could promote pre-disaster recovery planning by increasing funding for disaster planning grants and authorizing funds for recovery training and exercises.

*Pro.* This option could encourage states to develop new (or enhance existing) plans for disaster recovery. The "Recovery Annex" in the *Federal Response Plan* endorses this concept, stating, "Before a disaster, interagency planning and coordination provide a foundation for strengthening relationships among Federal and State agencies, voluntary organizations, and private sector entities ...."<sup>137</sup>

*Con.* Some states, perceiving themselves to be at little risk of terrorist attacks, might find other, arguably higher priorities, for the funds. In addition, pre-disaster recovery training and assistance activities would likely involve federal officials experienced in disaster relief. It is possible that assigning them to provide such assistance could detract resources from other federal emergency management activities.

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<sup>135</sup>Tony Coles, "Ground Zero: Get Moving," *New York Post*, May 3, 2002, p. A10.

<sup>136</sup>42 U.S.C. 5131(b).

<sup>137</sup>FEMA, *Federal Response Plan*, p. RF-3.

## Expedited Public Health Studies<sup>138</sup>

**Issue Summary.** Exposure to chemical, biological, and/or radiological (CBR) agents released in a terrorist situation can threaten victims' health for some time after exposure. Careful monitoring of the health of victims by academic researchers, in addition to federal agency monitoring efforts, as soon as possible after exposure could be useful in quickly determining regimens that would help the victims recover most successfully. Such monitoring practices could also advance the state of medical knowledge and public health policies and procedures and assist public officials responsible for negotiating liability and damage issues.

Many academic health researchers and other professionals not affiliated with government agencies and research laboratories might choose to delay the start of health monitoring until funding is secured. Conventional funding processes, such as applying for study grant money, often requires time-consuming review and clearance procedures. Early opportunities to begin monitoring victims' health and to gather relevant exposure information could be lost while applications are in process. Congress might elect to consider changes to current federal law to authorize expedited funding for public health studies, particularly after terrorist attacks that potentially increase public health concerns.

**Issue Analysis.** Federal administrative requirements associated with the provision of federal assistance after a major disaster can be waived in a major disaster by any federal agency if requested by the applicant state or local authorities pursuant to Section 301 of the Stafford Act.<sup>139</sup> At issue here is not typical disaster assistance *per se*, but expeditious funding for researchers in the private sector so that they might conduct health monitoring studies while optimum (although potentially tragic) conditions exist. Whereas the waiver authority in Section 301 applies to requests made by state and local authorities, qualified health researchers and other professionals might seek such authority to expedite the data-collection and analysis process.

**Application to Terrorist Attacks.** Impacts on human health began from the moment of the attacks.<sup>140</sup> Victims were exposed to chemical, physical, and psychological hardships during and after the September 11<sup>th</sup> attacks. At the WTC, asbestos and other substances were airborne and landed on animate and inanimate surfaces. Many people may have been exposed to these potentially health-threatening

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<sup>138</sup>Written by Michael Simpson, Resources, Science, and Industry Division.

<sup>139</sup>42 U.S.C. 5141.

<sup>140</sup>Department of Health and Human Services, Centers for Disease Control, "Assessment of Injuries Among Survivors of the Terrorist Attack on the World Trade Center—New York City, September 2001," *MMWR Journal Weekly*, vol. 51, Jan. 11, 2002, pp. 1-5; Trudy Berkowitz, Mt. Sinai School of Medicine, telephone conversations with the author, Jan.-Feb., 2002.

substances. In addition, residents and workers experienced psychological stresses related to the attacks; some may show evidence of that stress for years.<sup>141</sup>

As the consequences of the attacks on the survivors became known, various private sector medical, public, and occupational health researchers and other professionals recognized the need and unique opportunity to monitor the physical and psychological health of victims. Studies were seen to be needed to determine the best regimens for recovery, to add to medical and public health knowledge, and to provide facts for possible future efforts to address health as well as liability issues.

Despite the recognition of the needs and opportunities, some researchers postponed initiation of their studies until funding could be secured.<sup>142</sup> In the process, some opportunities for gathering data from victims and from the field may have been lost. As one example, pregnant women exposed to airborne emissions around the World Trade Center are being monitored for health effects of various substances including polychlorinated biphenyls, dioxins, furans, polycyclic aromatic hydrocarbons, lead, cadmium, and mercury. However, women who delivered their babies prior to the start of the study were excluded from the study cohort. Additional funding has been applied for to allow monitoring the babies' health to two years of age to assess possible effects of exposure on growth and development.<sup>143</sup>

**Background.** The Department of Health and Human Services (HHS) administers approximately 300 grant programs. Most of the grants are funded in a decentralized manner by several HHS agencies, including the National Institutes of Health and the Health Resources and Services Administration. Announcement and review guidelines help ensure that limited research grant funds are awarded fairly.<sup>144</sup> In general, considerable time is required to comply with the routine guidelines or rules for the programs. Under very unusual circumstances, sometimes involving interactions with foreign governments, a different set of procedures can be followed. It is possible, for example, for the secretary of HHS to designate that a "sole source" shall receive funds to perform a specific task.<sup>145</sup>

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<sup>141</sup>One study examined victims of "floods, earthquakes, and hurricanes" and found that natural disasters increased suicide rates for flood victims "in the four years after floods by 13.8 percent" and "in the two years after hurricanes by 31.0 percent," but "suicide rates did not change significantly after tornadoes or severe storms." Etienne G. Krug, M.D., and others, "Suicide After Natural Disasters," *The New England Journal of Medicine*, vol. 338, Feb. 5, 1998, p. 373-378.

<sup>142</sup>Trudy Berkowitz, Mt. Sinai School of Medicine, telephone conversations, Jan.-Feb. 2002.

<sup>143</sup>Frederica Perera, Mailman School of Public Health, Columbia University, telephone conversations, Jan.-Feb., 2002; Trudy Berkowitz, Mount Sinai School of Medicine, telephone conversations, Jan.-Feb., 2002.

<sup>144</sup>Details about HHS grants can be found at [[www.hhs.gov/grantsnet/grantinfo.htm](http://www.hhs.gov/grantsnet/grantinfo.htm)], visited June 11, 2002.

<sup>145</sup>The applicable statutory authority authorizing one type of sole source procurement is 41 USC 253 (c) (1), as set forth in FAR 6.302-1.



Authority somewhat analogous to proposals to expedite the application process for studies is suggested in P.L. 107-188, the “Public Health Security and Bioterrorism Response Act of 2001.” That statute authorizes the HHS Secretary, during a public health emergency, to transfer funds between appropriations accounts without lengthy waiting periods. Another legislative option (S. 1621), pending before Congress, would authorize the President to “carry out a program for the protection, assessment, monitoring, and study of the health and safety of community members, volunteers, and workers in the disaster area.”

**Policy Options.** Congress might consider the extent to which, or whether, existing federal policies pose an obstacle to efforts to examine the health effects of terrorist attacks. Some of the options that might be considered by Congress include the following.

***Maintain the Status Quo.*** One policy option is to keep, without change, current policies and procedures regarding funding for health studies. If Congress elects not to consider legislation on this issue, conventional announcement and review procedures would continue to be used to be followed.

***Pro.*** It takes time and human and material resources to create a scientifically sound study of physical and psychological health effects of exposure to physical and psychological hardships and to review and refine such a proposed study. Proponents of the status quo may contend that limited federal private research grant funds should be reserved for studies that have been thoughtfully and carefully created and reviewed. Holders of this view might argue that data losses incurred while creating and reviewing research funding applications are not worth jeopardizing conventional procedures meant to protect objectivity and quality of research.

***Con.*** Those who perceive the need for modifications to existing policy might argue that conventional scientific peer review prevents the loss of objectivity and quality in the performance of expedited health studies. In some situations, they may argue, the data lost while securing funding in conventional ways could be significant, and that explicit provision for expedited funding is needed to help insure the most complete knowledge base possible.

***Amend the Public Health Service Act.*** Another option might be to amend Section 319 of the PHS Act to permit the secretary during a public health emergency to accelerate reviews of grant applications and related funding mechanisms.<sup>146</sup> The Secretary could be given discretion to award research funds without lengthy waiting periods in the aftermath of severe emergencies or disasters.

***Pro.*** Proponents believe that an amendment to the PHS Act would contribute to maximizing the knowledge base from which determinations are made regarding the best regimens to help victims recover physically and psychologically from a terrorist attack. They assert such studies could add to medical and public health knowledge of causes of illnesses, the progression and manifestation of health impacts, and the range and effectiveness of remedies.

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<sup>146</sup>42 U.S.C. 247d-3.

*Con.* Those who oppose an expedited review procedure may argue that expedited funding could waste limited federal resources on hasty health studies of inferior scientific quality. Moreover, findings of inferior scientific quality could pollute the knowledge base and complicate future efforts to address liability and damage issues associated with terrorist attacks.

## Tracking Federal Costs of Disasters<sup>147</sup>

**Issue Summary.** Information on federal disaster assistance costs likely will be of interest in congressional assessments of current disaster assistance policies and their application to future terrorist attacks. Cost data might be used to compare benefits provided from one disaster (including terrorist attacks) to another, to monitor the expenditure and use of federal funds, and to establish budget priorities and estimates. At present, individual federal agencies might report to Congress in the annual budget requests on the obligations they have made on preparedness, response, recovery, or mitigation activities. However, information is not collected in a comprehensive or consistent fashion.

Many, if not all, congressional appropriations subcommittees have jurisdiction over agencies that provide disaster assistance. The issue before Congress is whether, and to what extent, federal resources should be committed to tracking federal costs. Among the options it may elect to consider, Congress might choose to mandate that the executive branch collect and publish federal emergency management cost data, consolidate such information based on each agency's submissions, or establish a common reporting framework to be used by the agencies.

**Issue Analysis.** The need for comprehensive data on federal disaster expenditures has been discussed by Members of Congress as well as researchers and administrators in the emergency management field.<sup>148</sup> The tremendous costs of responding to and recovering from the terrorist attacks of September 11 might result in additional requests for such information, particularly as Congress makes budget allocation decisions among pressing needs.

**Application to Terrorist Attacks.** The attack on the WTC and the Pentagon might have resulted in the most expensive disaster assistance effort in the nation's history. FEMA work constitutes just one part, although a significant element of, the federal effort. The FEMA budget justification for FY2003 notes that "response and recovery efforts have been, and continue to be, massive, as are the projected financial costs, which are expected to eventually approach \$9.5 billion."<sup>149</sup>

Before the attack, the highest level of FEMA obligations for a single disaster was \$7 billion provided to California after the Northridge earthquake in 1994.<sup>150</sup> The costs of consequence management associated with September 11 might be compared to an entire year's obligations. The disaster assistance costs associated with

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<sup>147</sup>Written by Keith Bea, Government and Finance Division.

<sup>148</sup>For example see: U.S. Congress, House Committee on the Budget, Task Force on Budget Process, *Budgetary Treatment of Emergencies*, hearing, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 23, 1998 (Washington: GPO, 1998).

<sup>149</sup>U.S. Federal Emergency Management Agency, *Justification of Estimates FY2003* (Washington, 2002), p. DR-5.

<sup>150</sup>*Ibid.*, p. DR-7.

September 11 appear to be almost twice the amount obligated for “the decade high total of \$4.4 billion” in FY1999.<sup>151</sup>

The emergency supplemental legislation enacted after September 11 requires that OMB report to Congress on funds provided in response to the September 11 attacks.<sup>152</sup> Accordingly, OMB collects comprehensive data on obligations committed with the \$40 billion appropriation. As of March 31, 2002, of the \$40 billion appropriated, \$18.275 billion had been obligated, \$11.6 billion (63%) by the Department of Defense. Of the \$6.7 billion obligated by the other federal agencies as of that date, \$1.1 billion had been obligated by FEMA; \$1.7 by the HHS for health care expenses and counseling; and other departments and agencies obligated less than \$1 billion each for disaster recovery assistance.<sup>153</sup>

While the quarterly report issued by OMB contains some information on federal disaster assistance costs, it could be perceived to provide insufficient detail to enable Members of Congress to discern the particular purposes for which funds have been used, and might raise additional questions about federal disaster assistance priorities. Brief summary information on obligations is presented for some agencies, but not for all. For example, the \$2 million obligated by the Economic Development Administration of the Department of Commerce “will be used to support business development assistance programs.” To what extent are those programs linked to the September 11 attacks? The destination or potential use of these funds is not indicated.<sup>154</sup> Also, considerable controversy has been reported regarding the needs of the educational system in New York City.<sup>155</sup> Some claim that needs have not been met. However, no obligations had been made by the U.S. Department of Education (ED) as of March 31, 2002, and all of the funds will not be used in New York City. According to the OMB report:

The Department of Education expects to obligate \$5 million of its \$10 million in emergency funds for the NYC areas by the end of May. No obligations have been made because the Department has not determined the relative funding

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<sup>151</sup>U.S. Federal Emergency Management Agency, *Justification of Estimates Fiscal Year 2002* (Washington: 2001), p. DR-5. In FY1999 a total of 103 declarations were issued, as follows: 40 major disasters, 5 emergencies, and 58 fire suppressions. Historical data on FEMA disaster relief obligations are presented in CRS Report RL31359, *Federal Emergency Management Agency Funding for Homeland Security and Other Activities*, by Keith Bea.

<sup>152</sup>“That the Director of the Office of Management and Budget shall provide quarterly reports to the Committees on Appropriations on the use of these funds, beginning not later than January 2, 2002:” P.L. 107-38.

<sup>153</sup>U.S. Office of Management and Budget, “Report on Expenditures from the Emergency Response Fund,” amounts as of March 31, 2002 (Washington: 2002).

<sup>154</sup>Note that information such as this may justifiably not be expected in summary reports provided by OMB, but may be available from each agency. This, however, raises the issue of the degree of effort Congress would be expected to exercise in order to obtain information on the use of appropriated disaster assistance funds.

<sup>155</sup>For example, see: Michelle Davis, “New York Schools, U.S. Officials at Odds Over 9/11 Aid,” *Education Week*, May 15, 2002, vol. 21, pp. 24, 26.

allocation for NY City, NY State, Connecticut and New Jersey. The Department has no specific plans to obligate the remaining \$5 million in emergency funds. Congress instructed the Department not to spend all of its emergency funds on September 11<sup>th</sup> response, but instead use a portion of the funds for other jurisdictions and emergencies.<sup>156</sup>

In summary, while the reports issued by OMB pursuant to the congressional directive provide information on tracking total obligations, they might be considered deficient for purposes of assessing the intended use of the funds.

If other terrorist attacks were to occur in the future, Congress might ask for and require data on total federal obligations from the responding agencies in order to monitor the flow of federal funds and establish funding priorities. The need or usefulness of such an extensive database, however, might be debated. Such a database could help Congress estimate the funding that might be needed and to allocate funds among competing accounts. However, the establishment of a data baseline on past and ongoing expenditures might arguably be unnecessary as Congress would likely meet all eligible costs for which victims are entitled to receive assistance.

Near unanimous statements have been issued by officials and analysts that other, more costly, attacks should be anticipated. Accordingly, it may be necessary for Congress to begin to collect information on disaster assistance payments in order to make decisions regarding disaster costs. For example, Congress might use the information to set priorities among needs unmet due to a variety of reasons, including the type and extent of damage suffered by a community or the potential threat of future attacks.<sup>157</sup> The information might also be used to reassess budget priorities, evaluate the future viability of cities damaged by nuclear attacks, or make other difficult decisions.

**Background.** FEMA is only one of several federal agencies that provide federal disaster assistance after terrorist attacks and other disasters. Depending on the type of devastation and the area affected, the Departments of Agriculture, Defense, HUD, Commerce, and Transportation, the SBA, and the Environmental Protection Agency (EPA) are among other federal agencies that have obligated and will continue to obligate billions of dollars for disaster assistance. While data on disaster obligations are generally maintained and available from each federal department or agency, total federal disaster assistance obligations are not collected or disseminated on a regular basis.

Following devastating disasters in 1989 and the early 1990s (Hurricane Hugo, the Loma Prieta earthquake, Hurricane Andrew, the Midwest floods), some Members of Congress expressed concern about the rising costs of federal disaster assistance. Bipartisan leadership task forces were established in both the House and the Senate

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<sup>156</sup>“Report on Expenditures from the Emergency Response Fund.”

<sup>157</sup>Reconstruction of the WTC complex in lower Manhattan could invite future “copycat” attacks. See: Blair Kamin, “Skidmore Eyes Huge Skyscraper to Replace NYC’s Twin Towers,” *Chicago Tribune*, June 6, 2002, p. 1.

in 1993 to collect data and consider policy options. The reports issued by the task forces provided comprehensive information on federal disaster costs and policies. The House Task Force on Disasters recommended that Congress seek data on disaster costs as follows:

Congress should request data on the cost of all phases of disasters, including the cost to federal taxpayers of the tax deduction for casualty losses from disasters. This information has never been comprehensively gathered, and as a result it is not known how much the nation pays for all phases of disasters, particularly the recovery phase which can take several years.<sup>158</sup>

The report issued by the Senate Task Force on Funding Disaster Relief, published more than a year after the House report was completed, contained perhaps the most comprehensive information on federal disaster assistance costs that has yet been compiled. The Senate report included the results of a survey conducted by the General Accounting Office of federal disaster assistance obligations made from fiscal year 1977 through 1993.<sup>159</sup> Table 2, below, presents information drawn from that compilation for the 10-year period FY1984-FY1993. Data are presented for federal programs in accordance with the four major phases of disaster assistance: preparedness, mitigation, response, and recovery.

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<sup>158</sup>U.S. Congress, House Bipartisan Task Force on Disasters, *Report* [unpublished] (Washington: Dec. 14, 1994), p. 12.

<sup>159</sup>U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S. Doc. 104-4, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995).

**Table 2. Federal Disaster Assistance Obligations, FY1984-1993**  
(millions of dollars)

Fiscal year	Preparedness	Mitigation	Response	Recovery	Total
1984	104.8	1,564.6	48.4	2,367.9	4,085.7
1985	92.9	1,466.3	28.0	1,328.6	2,915.7
1986	77.6	1,368.3	82.4	1,733.0	3,216.3
1987	77.3	1,423.9	55.4	1,515.0	3,071.6
1988	76.6	1,414.5	28.1	742.7	2,261.9
1989	71.9	1,430.8	252.0	6,326.5	8,081.8
1990	65.8	1,446.7	281.9	4,791.6	6,586.0
1991	69.1	1,424.6	69.9	1,230.4	2,794.0
1992	65.1	1,449.9	678.3	4,460.6	6,654.0
1993	62.3	1,289.6	475.7	4,828.3	6,655.9

Source: U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S. Doc. 104-4, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995), p. 5.

The data collected for the Senate task force report provides a snapshot of costs, a picture of federal funding that had previously not been available. Some may perceive the data in the Senate task force report to have little relevance to the needs of the 107<sup>th</sup> Congress, and future Congresses, as budget needs and priorities are considered and established. On the other hand, one researcher who has long considered the issue of emergency management policies and activities asserts:

What is needed is a comprehensive database that contains information about (1) current levels of vulnerability to natural hazards on national and local scales, (2) compilations of past losses, and (3) the costs of pre-event mitigation activities.... Previous loss records only indicate in a general way the overall scale and scope of the problem. Monetary losses have not been systematically assessed, nor have the economic ramifications of a disrupted social structure been compiled. The next generation requires better delineation of the types and extent of losses in specialized categories. A national loss inventory would document losses from past and current natural disasters, thereby establishing a baseline for comparison with future losses. Data on the type of loss, location, specific cause of the loss, and actual dollar amounts needs to be compiled in a uniform fashion for across-hazards comparisons.<sup>160</sup>

<sup>160</sup>Dennis S. Mileti, *Disasters by Design* (Washington: Joseph Henry Press, 1999), p. 102-103.

**Policy Options.** If Congress wished to require the collection and dissemination of federal disaster assistance costs, including those costs associated with terrorist attacks, Members might consider the following options.

***Maintain the Status Quo.*** Congress might take no legislative action and rely on periodic surveys such as the one completed by GAO and published in 1995 by the Senate, or on special reports issued by OMB pursuant to legislative mandates such as those included in P.L. 107-38.

*Pro.* Some may argue that the costs associated with the collection of the information would be better spent on disaster assistance itself or on other needs. Historically, Administration requests for disaster funding are not contentious issues of debate in Congress, and some may contend that, regardless of the costs, Congress will appropriate funds needed for disaster recovery.

*Con.* Escalating costs involved in the terrorism conflict may require Congress to make difficult decisions among high level priorities. A lack of systematic data on federal assistance after terrorist attacks might complicate the establishment of budget priorities. If, as directed by the President, the proposed Department of Homeland Security (DHS) coordinates a national strategy to combat terrorism, the existence of comprehensive data could enable Congress to better evaluate and decide among Administration budget requests.

***Require OMB to Collect and Report Data.*** Legislation might be considered to require OMB to collect data on federal disaster assistance costs each year and publish the information in the *Budget Appendix*.

*Pro.* OMB receives expenditure data from all federal agencies in order to compile the President's budget each year. As part of that process, OMB could direct agencies to provide data in a standardized format on emergency management expenditures (obligations, outlays, or both) made each fiscal year.

*Con.* Additional funds likely would be requested from federal agencies, and OMB, to collect this information. Also, a standardized format to be used by all federal agencies might not be easily developed as different forms of assistance such as loans, insured loans, grants, and technical assistance are provided to disaster victims, depending on the needs of the stricken communities.

***Department of Homeland Security Requirement.*** The task of developing a database on federal consequence management costs could be assigned to the Department of Homeland Security when Congress debates legislation (H.R. 4660/S. 2452, inter alia) to implement the President's proposal.

*Pro.* The department would have the authority and the purview to collect federal obligations in a uniform fashion from all agencies. Such data could be used by congressional appropriators charged with oversight of the department.



*Con.* The Department of Homeland Security will likely be assigned a range of missions and functions that impinge on questions of continuity of government and national security. The collection of data on federal assistance might be considered a low priority for the new organization.

## POLICY ISSUES

### Local Government Revenue Loss<sup>161</sup>

**Issue Summary.** Areas struck by disasters or terrorist acts often experience a decline in economic activity, and, consequently, a reduction in tax collections for affected local governments. However, the financial and public service obligations of local governments persist and may actually increase after the catastrophe. The unexpected loss of revenue, coupled with the increased financial burden of responding to a terrorist act or natural disaster, often leads local governments to request assistance from both the state government and the federal government.

The Stafford Act authorizes financial assistance to local governments that face tax revenue losses as a result of a major disaster. Congress might elect to modify the existing authority in light of the needs of communities that could be devastated by terrorist attacks.

**Issue Analysis.** Generally, local governments maintain a capital budget and an operating budget. The capital budget, which is financed with debt for public infrastructure spending, is usually kept separate from the operating budget. The operating budget matches current expenditures with current revenues and is meant to be balanced every fiscal year. Deficits in the operating budget are not usually financed with debt. As a result, a sudden loss of revenue, without a corresponding drop in current expenditures, is difficult for local governments to overcome.

The Community Disaster Loan (CDL) program, authorized by the Stafford Act and administered by FEMA, assists local governments that lose tax revenue after a major disaster. The objective of the CDL program is to help

... any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.<sup>162</sup>

The loans are intended to help local governments finance governmental functions by replacing lost tax revenue after a disaster interferes with or diminishes economic activity.

The CDL program allows for loan forgiveness when it is apparent (in the judgment of the independent auditors hired by FEMA and FEMA staff) that the affected government will not be able to service the loan. Loan forgiveness, or the anticipation of a cancelled loan, may be one significant reason local governments participate in the CDL program.

**Application to Terrorist Attacks.** The effect of terrorist attacks on economic activity is similar in many ways to the effect of natural disasters. Revenue

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<sup>161</sup>Written by Steven Maguire, Government and Finance Division.

<sup>162</sup>42 U.S.C. 5184

from local income, property, and sales taxes will almost certainly decline when terrorist attacks take lives, destroy buildings, and disrupt commerce. If, as occurred in New York and Virginia after September 11, a major disaster declaration is issued after a terrorist attack, affected local governments may be eligible for CDL assistance. Attacks as significant as those of September 11 may merit greater aid (more than the current CDL program allows) given the magnitude of the destruction. For example, the New York City comptroller estimated that tax revenues in FY2002 would be "... \$738 million less than currently projected," as a result of the attacks.<sup>163</sup>

To date, unlike some natural disasters, the physical effects of recent terrorist acts have been concentrated in relatively small geographic areas. The physical impact of the September 11 attacks affected concentrated areas of New York City, NY, Arlington, VA, and Stony Creek Township, PA. Similarly, the destruction in 1995 of the Murrah federal building affected a portion of Oklahoma City. In contrast, some natural disasters, such as severe hurricanes, tornados, and floods have affected many local governments in several jurisdictions. The limited boundaries of areas affected by terrorist attacks may change. In the future, terrorist acts may affect larger and less defined areas across political jurisdictional boundaries. The effect of these types of terrorist acts would more closely resemble that of large natural disasters, such as those affected by catastrophic earthquakes and hurricanes.

**Background.** Local governments in a declared major disaster area (states are not eligible) can apply for a CDL of up to 25% of their operating budget for the fiscal year in which the disaster occurred. The implementing regulation stipulates that the loan application

... shall include ... copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application.<sup>164</sup>

The maximum loan amount is \$5 million; before 2000, there was no limit.<sup>165</sup> In general, the jurisdiction may draw down the loan in increments as prescribed in the promissory note for up to five years. The associate director of FEMA, under special circumstances, may extend the loan term to 10 years.<sup>166</sup>

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<sup>163</sup>New York City Comptroller, "Trade Center Attack Could Cost City Economy More Than \$100 Billion Over 2 Years: City Will Need Additional Federal Aid To Recover," press release, Oct. 4, 2001. The press release is available at the following website: [[http://comptroller.nyc.gov/press/2001\\_releases/print/01-10-064.shtm](http://comptroller.nyc.gov/press/2001_releases/print/01-10-064.shtm)], visited May 15, 2002. The Federal Reserve Bank of New York seems to agree with the \$738 million estimate, noting that the "New York City Comptroller's initial estimate of the attack-related tax revenue losses to the city, on the order of \$600 million in the fiscal year ending in June, appears reasonable; a similar amount is expected to be lost in the next fiscal year." From document accompanying a letter from William J. McDonough, President, Federal Reserve Bank of New York, to The Honorable Carolyn B. Maloney, April 18, 2002, p. 7.

<sup>164</sup>44 CFR 206.364(b)(1).

<sup>165</sup>P.L. 106-390 imposed the \$5 million limit.

<sup>166</sup>According to 44 CFR 206.361(e), the loan can be extended even beyond the 10 years (continued...)

The interest rate on CDLs is based on the five-year Treasury bill rate on the date of the loan approval. On June 7, 2002, the average interest rate (yield) on five-year municipal bonds was 3.40% and for five-year Treasury notes the average yield was 4.32%.<sup>167</sup> The interest rate on CDLs is higher than the average rate on municipal (state and local) bonds. Generally, municipal debt carries a lower interest rate because the interest is not included in the holder's taxable income. The tax exemption of state and local government bond interest allows the issuing governments to issue bonds with lower interest rates.

Since 1976, officials administering the CDL program have approved 64 loans (four of which were withdrawn by the applicant before any funds were disbursed, thus only 60 loans were made) to local governments that experienced significant revenue losses from a declared disaster (see Table 3, below, for summary information on the CDL program).<sup>168</sup> Of the 60 loans made, 12 have been completely cancelled; all principal and any interest owed by the borrower was forgiven. Cancellation is allowed under the statute.<sup>169</sup> Regulations governing implementation of the Stafford Act provide that FEMA shall:

“... cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character.”<sup>170</sup>

Pursuant to this regulation, FEMA has the discretion to cancel all principal and interest due on a CDL or on some portion of CDL principal and interest. As of December 31, 2001, \$97.9 million of principal and interest on CDLs had been cancelled (almost 42% of total disbursements).<sup>171</sup> Table 3 shows the amount of cancelled principal and interest as a percentage of disbursed funds.

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<sup>166</sup>(...continued)

under extenuating circumstances. Also, as exhibited in Table 3 of this report, the entire loan or parts of the loan principal and interest can be cancelled.

<sup>167</sup>The two interest rates (or yields) are from the following web sites: municipal bonds, [<http://www.bloomberg.com/markets/psamuni.html>]; and five-year Treasury notes, [<http://www.bloomberg.com/markets/C13.html>]. Sites visited April 23, 2002. Since 1976, the average monthly rate on mixed grade municipal bonds with long term maturity (20 years) was 7.1%; for five-year Treasury bills, the average monthly rate was 8.0%. Data are from: [<http://www.federalreserve.gov/releases/H15/data.htm#top>], site visited April 23, 2002.

<sup>168</sup>FEMA Program Specialist Gerry Miederhoff said in an interview with CRS on March 23, 2002, that no application has been declined.

<sup>169</sup>42 U.S.C. 5184(c).

<sup>170</sup>44 C.F.R. 206.366.

<sup>171</sup>Four cancellations account for almost four-fifths of the total. Those loans were issued to the U.S. Virgin Islands after hurricane Hugo (\$33.2 million); Kauai, HI, after hurricane Iniki (\$19.1 million); Homestead City, FL, after hurricane Andrew (\$13.5 million); and American Samoa after hurricane Val (\$12.0 million).

**Table 3. Summary of CDL Program, 1976 to 2001**

		Amount of Principal and Interest:		Principal and Interest as Percent of Disbursed Funds	
Total Loans	Amount Disbursed	Paid	Cancelled	Paid	Cancelled
60 <sup>A</sup>	\$233,523,691	\$13,436,376	\$97,901,526	5.75%	41.92%

Source: FEMA data provided by FEMA program specialist Gerry Miederhoff, and CRS calculations, as of Dec. 31, 2001.

<sup>A</sup> Four additional loans were approved but later withdrawn by applicants.

Cancellation authority under the CDL program follows on the precedent enacted by Congress in the Disaster Relief Act of 1970 (the 1970 Act).<sup>172</sup> The deferred grants authorized by the 1970 Act were in response to the “... extensive property damage and a loss of tax base ...” in the aftermath of Hurricane Camille.<sup>173</sup> After a series of hearings following Hurricane Agnes in 1972, the deferred grant program was converted into a loan program under the Disaster Relief Act of 1974 (the 1974 Act).<sup>174</sup> In the 1974 Act, the original deferred grant program “... was retained as the cancellation feature of the [new CDL] program.”<sup>175</sup>

It appears that the current CDL program is significantly underutilized given the number of disasters and affected jurisdictions.<sup>176</sup> Since 1976, there have been 906 declared major disasters, many of which affected multiple jurisdictions per disaster. However, only 64 loans resulting from 19 separate disasters have been approved.<sup>177</sup> If the policy objective of the CDL program is to help “... *any* [emphasis added] local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster,” the relatively low utilization rate of CDLs may indicate that this objective has not been achieved.

<sup>172</sup>Disaster Relief Act of 1970, P.L. 91-606, 84 Stat. 1756.

<sup>173</sup>U.S. Congress, House Committee on Appropriations, Subcommittee on VA, HUD, and Independent Agencies, *Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for 1998*, hearings, part 4, 105th Cong., 1st sess., March 6, 1997 (Washington: GPO, 1997), p. 91.

<sup>174</sup>P.L. 93-288, 88 Stat. 158.

<sup>175</sup>*Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for 1998*, p. 91.

<sup>176</sup>Alternately, the low utilization rate may indicate that few local governments need assistance following a declared major disaster.

<sup>177</sup>FEMA, *Total Major Disaster Declarations*, at: [[www.fema.gov/library/dis\\_graph.htm](http://www.fema.gov/library/dis_graph.htm)], visited April 2, 2002.

Another possible contributing factor to the low utilization of CDLs is the FEMA guidance that participants establish a sinking fund for the CDL.<sup>178</sup> (Sinking funds are generally used for eventual retirement of a loan.) The money allocated to the recommended sinking fund would increase the cost of the CDL to the local government. In addition to the sinking fund, the relatively higher interest rates for CDLs and the uncertainty surrounding the probability of a loan cancellation may be other explanations for the low ratio of loans made to disasters. Table 4 provides more details of the outcomes of loans made under the CDL program.

**Table 4. Summary of CDLs by Current Status, 1976 to 2001**

Number of FEMA Loans by Status	Amount of Loan:		Amount of Principal and Interest:	
	Approved	Disbursed	Paid	Cancelled
32 repaid	\$5,719,016	\$3,674,330	\$5,260,467	\$415,093
12 cancelled	\$38,495,768	\$38,490,768	\$0	\$48,818,933
10 outstanding	\$141,057,218	\$139,718,593	\$112,160	\$11,975,667 <sup>A</sup>
4 suspended	\$1,968,895	\$0	\$0	\$0
4 withdrawn	\$965,922	\$0	\$0	\$0
1 debt collection	\$1,540,000	\$1,540,000	\$0	\$3,523,789
1 written off	\$89,912,000	\$50,100,000	\$8,063,750	\$33,168,044
60 total <sup>B</sup>	\$279,658,819	\$233,523,691	\$13,436,376 <sup>C</sup>	\$97,901,526 <sup>C</sup>

Source: FEMA data and loan status information provided by FEMA program specialist Gerry Miederhoff, and CRS calculations, as of Dec. 31, 2001.

<sup>A</sup> Reflects amount of principal and interest cancelled for loans still in repayment as of December 31, 2001.

<sup>B</sup> Total number does not include four loans withdrawn by applicants.

<sup>C</sup> As of December 31, 2001, a significant amount of principal and interest on loans still in repayment was still accruing. Therefore, the amount of principal and interest paid and cancelled accounts for only a portion of the total amount approved and disbursed.

**Policy Options.** In the short run, reduced economic activity in the aftermath of a natural disaster or major terrorist act typically leads to reduced local tax revenue. However, the need for government services does not decline along with the drop in tax revenue, but may increase after a disaster. Through the Disaster Relief Act of 1974, Congress created the current CDL program for the short term budget crises that often arise following natural disasters. It may be argued that the CDL program could be reshaped to meet the challenge likely to be presented by terrorist acts because of the similar budget crises attacks have on economic activity and local tax revenue. Following are some policy options that Congress might consider.

**Maintain the Status Quo.** The current CDL program has approved 64 loans from 1976 through December 31, 2001. Over this same period, there have been 906

<sup>178</sup>44 CFR 206.365(a)(2).

declared major disasters. The data provided by FEMA and presented in Table 3, seem to show that the CDL program is better characterized as a grant program with a loan component due to the high rate of loan cancellation. Almost 42% of disbursed funds for CDLs have been cancelled. One option for Congress is to continue with the current CDL rules and procedures without modification, including the ineligibility of states for CDL assistance.<sup>179</sup>

*Pro.* Maintaining the status quo could be achieved with little or no additional federal cost. The relatively tight federal budget suggests that additional spending for an expanded CDL program would necessarily lead to: reduced spending on other priorities, higher taxes, more debt, or some combination of the three. Thus, continuing the current CDL without changes would have minimal impact on the federal fiscal position.

*Con.* Many local governments would not benefit significantly from the existing CDL program in the event of a disaster because of the recently imposed \$5 million limit per disaster. For example, the New York City comptroller projected that tax revenues in FY2002 will be "... \$738 million less than currently projected."<sup>180</sup> Even though all of the projected shortfall in New York City tax revenue may not be directly attributable to the terrorist acts, even 25% of the revenue loss generated by the attacks would greatly exceed the current \$5 million CDL cap. In addition, state revenue loss needs continue to be unmet.

**Authorize Grants, Not Loans.** The current CDL program has served as a de facto grant program for the 12 jurisdictions whose CDLs have been fully cancelled. Replacing the current loan mechanism with a direct grant program is another option.

*Pro.* With a grant program, immediate revenue relief could be provided without saddling the affected areas with additional debt. Because the cost of the grant would be shared by all federal taxpayers, the burden on the affected government would be minimized. In addition, federal monitoring of loan compliance and loan repayment may not be necessary with grants. Thus, relative to the current CDL program, lower administrative costs per dollar of aid delivered are likely with a grant program. In

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<sup>179</sup>The Fiscal Policy Institute reports that, according to the New York state budget director, state "...tax revenue will be down by up to \$9 billion over the course of the next 18 months as a direct result of the September 11th attacks." Fiscal Policy Institute, "New York and the Federal Fisc in the Aftermath of September 11th: The State and Local Impacts of Federal Policy Options," (New York: January 23, 2002), p. 11.

<sup>180</sup>New York City Comptroller, "Trade Center Attack Could Cost City Economy More Than \$100 Billion Over 2 Years: City Will Need Additional Federal Aid To Recover," press release, Oct. 4, 2001. The press release is available at the following Web site: [[http://comptroller.nyc.gov/press/2001\\_releases/print/01-10-064.shtm](http://comptroller.nyc.gov/press/2001_releases/print/01-10-064.shtm)]. The Federal Reserve Bank of New York notes that the "New York City Comptroller's initial estimate of the attack-related tax revenue losses to the city, on the order of \$600 million in the fiscal year ending in June, appears reasonable; a similar amount is expected to be lost in the next fiscal year." From document accompanying a letter from William J. McDonough, President, Federal Reserve Bank of New York, to The Honorable Carolyn B. Maloney, April 18, 2002, p. 7.

1997 congressional testimony, then FEMA Director James Lee Witt asked rhetorically,

“... then let it be a grant program if they can't pay the money back. Why spend all the money we are having to spend administratively to support these loans and to have accounting firms go in and do audits of the cities or governments that are getting the loans if they are not being repaid?”<sup>181</sup>

*Con.* A grant program would likely be used by more applicants and could be potentially more expensive for federal taxpayers. The greater cost would also redistribute more revenue from non-affected areas to affected areas. Even though administrative costs would decline with grants, the grants might require more federal control and oversight on the use of funds. Administrative compliance might increase the implicit cost of the grant program.

***Change the CDL Interest Rate.*** Modification of the CDL program to make the loans more attractive would serve more governments that have experienced revenue shortfalls after declared major disasters. Greater use of the program could result from lower CDL interest rates.

*Pro.* Existing administrative structures could easily be adapted to allow for lower interest rates. For example, FEMA could implement a different interest rate base, such as a fixed amount (basis points) below the host state's (or local government's) current five-year bond rate. Such a change would reduce the burden on the borrowing government.

There would be other benefits to modifying the interest rate on the CDLs. Linking the CDL interest rate more clearly to the underlying credit rating of the borrowing government would reduce the adverse selection that may exist under the current program.<sup>182</sup> As noted previously, the average municipal bond interest rate is lower than the CDL rate. Thus, it seems that only those jurisdictions with lower than average credit ratings, and higher than average interest rates, would be attracted to the CDL program.

*Con.* A lower interest rate would, by design, increase the attractiveness of the CDL program to more units of local government. The increased demand that might result would increase the federal cost of the program. Also, some might question whether the federal role should be expanded when the benefits of the federal expenditure would flow to a relatively narrow constituency.

***Eliminate the \$5 Million Cap.*** The current CDL program limits the total amount of a loan to \$5 million per jurisdiction, per event. The recently established

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<sup>181</sup>*Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for 1998*, pp. 64-65.

<sup>182</sup>The term “adverse selection” refers to the concept in insurance markets where only those who are likely to need insurance will purchase policies. For borrowing, only jurisdictions with budget trouble will need to borrow.



limit would prevent large jurisdictions from benefitting significantly from the CDL program.

*Pro.* Increasing or removing the \$5 million limit would likely deliver more federal aid to large jurisdictions than would otherwise be allowed under current authority. Because of the limit, assistance has not significantly benefited large jurisdictions. Thus, the limit leads to a redistribution of benefits from large to small jurisdictions that receive CDLs. Eliminating the cap would minimize this redistribution effect. In addition, some would argue that the other cap, 25% of the borrowing government's operating budget in the fiscal year of the event, achieves the objective of capping the federal exposure, albeit at a higher level.

*Con.* The primary argument against eliminating the cap is the greater potential cost to the federal government. Five of the 64 CDLs approved exceeded the \$5 million cap and together accounted for almost 80% of the cancelled interest (see Table 5). The large loans seem more likely to be cancelled. As a result, removing the \$5 million cap would further increase the federal cost. Another argument against removing the cap is the increased local reliance on federal financing of primarily local expenditures.

**Table 5. CDLs Greater than \$5 Million**  
(in \$ millions)

Event	Date of Event	Principal Approved	Amount Disbursed	Principal and Interest Cancelled
Hurricane Hugo, U.S.V.I.	9/20/1989	\$89.9	\$50.1	\$33.2
Hurricane Val, American Samoa	12/13/1991	\$10.7	\$10.2	\$12.0
Hurricane Andrew, Homestead, FL	8/24/1992	\$10.3	\$10.3	\$13.5
Hurricane Iniki, Kauai, HI	9/12/1992	\$15.0	\$15.0	\$19.1
Hurricane Marilyn, U.S.V.I.	9/16/1995	\$127.2	\$127.2	\$0.0
Total for CDLs over \$5 million (5 loan approvals)		\$253.1	\$212.8	\$77.8
Total for all CDLs (64 loan approvals)		\$279.7	\$233.5	\$97.9

Source: Data are from Gerry Miederhoff, FEMA program specialist, as of Dec. 31, 2001.

***Eliminate the CDL Program.*** Some argue that direct federal assistance for lost local tax revenue via a loan program is not an efficient means of providing assistance to affected local governments. Thus, eliminating the CDL program might be considered a viable policy alternative.

*Pro.* Elimination of the CDL program would also eliminate the direct federal revenue loss and the related FEMA administrative burden. In the absence of a federal program, states might assume a larger role in relief efforts for communities suffering after a natural disaster or terrorist act. State control over revenue

replacement could be a more efficient allocation and redistribution of revenue given that the benefits of such spending will likely remain in the state.

*Con.* The CDL program, even with the previously noted criticisms, has provided needed aid to several communities. Supporters of a federal role in helping stricken communities cope with revenue losses note that “By definition, disasters exceed the capacity of the governments whose jurisdiction they strike.”<sup>183</sup>

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<sup>183</sup>Amy K. Donahue and Philip G. Joyce, “A Framework for Analyzing Emergency Management with an Application to Federal Budgeting,” *Public Administration Review*, vol. 61, Dec. 2001, p. 728.

## Reimbursement for Security Alerts<sup>184</sup>

**Issue Summary.** In the immediate aftermath of the September 11 attacks the attorney general, in coordination with the director of the Office of Homeland Security, issued alerts to the nation that warned of threats of other terrorist attacks. In response to the alerts, state and local agencies, including the National Guard, established security patrols and stepped up enforcement capabilities to prevent additional attacks. As a result, these agencies incurred overtime and other costs in response to the alerts.

To improve the usefulness of the alerts, the OHS established a color-coded Homeland Security Advisory System to identify the estimated likelihood that a terrorist threat may be acted upon.<sup>185</sup> At issue is whether or not the federal government should help pay for security measures following an alert issued under the Advisory System or by a responsible federal official. Related issues include whether federal law enforcement resources should be assigned to non-federal facilities, National Guard troops should be federalized under certain conditions, or a mission for the U.S. military should be created to respond to the alerts.

**Issue Analysis.** Congress has funded and assisted state and local governments facing emergency situations for years, including those governments confounded by particularly complex criminal cases (such as the Atlanta murder cases involving Wayne Williams in 1981), international threats to foreign visitors or dignitaries (such as the visits of the Pope to the United States), and reimbursement for law enforcement costs incurred after certain disasters (aid to the U.S. Virgin Islands in 1989 after Hurricane Hugo). While there is less history for congressional support for preparedness and prevention activities, some precedent exists, as discussed below.

**Application to Terrorist Attacks.** Congress has recognized that federal assistance is required to supplement state and local counter-terrorism efforts. Federal aid has been provided for decades for a variety of shared law enforcement activities related to terrorist actions in past years, notably those of international drug cartels, interstate crime activities of organized crime syndicates, and the consequences of suspected terrorist actions such as destruction of airliners.

Following the terrorist attacks on the World Trade Center in 1993 with a truck bomb and the destruction of the Murrah federal building in Oklahoma City in 1995, Congress increased the federal role in preparedness and prevention activities. Congress appropriated \$50 million in 1998 “to initiate and expand activities of the Department of Defense to prevent, prepare for, and respond to a terrorist attack in the

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<sup>184</sup>Written by Keith Bea, Government and Finance Division, with contributions by Steven R. Bowman, Foreign Affairs, Defense, and Trade Division.

<sup>185</sup>See: U.S. Office of Homeland Security, “Gov. Ridge Announces Homeland Security Advisory System,” [<http://www.whitehouse.gov/news/releases/2002/03/20020312-1.html>], visited April 8, 2002.

United States involving weapons of mass destruction.”<sup>186</sup> Another example of federal support for domestic preparedness concerns preparation for international Olympic events hosted in the United States. For example, the FY2001 supplemental appropriations act included funds for security activities at the 2002 Winter Olympics.<sup>187</sup>

Since September 11, Congress has supported increased vigilance and enhanced security through appropriations for the deployment of National Guard troops and continued jet fighter patrols over New York City and Washington, D.C. Also, roughly two months after the September attacks, Congress enacted legislation to authorize the Department of Transportation to assume responsibility for screening airline passengers, carry-on luggage, and checked baggage.<sup>188</sup>

The security and terrorism prevention efforts in the United States continue to be a shared function of the federal and state governments. It is generally agreed that federal officials and federal resources alone cannot protect the entire nation from further attacks. State and local law enforcement officials, National Guard troops subject to each governor’s call, as well as private security forces continue to guard communities and potential targets. These forces comprise the largest front line of homeland defense, and operate subject to budget decisions of state and local officials or facility owners.

As discussion on the proposed Department of Homeland Security indicates, certain counterterrorism activities are best undertaken by the federal government, including the analysis and dissemination of intelligence on terrorist threats. All officials working with intelligence information face challenges in assessing the accuracy of the large amount of collected data, sorting and analyzing the material, and producing useful material for key decision makers. As was widely publicized in May 2002, questions have been raised about the intelligence process and its adequacy prior to September 11. Fortunately, terrorist attacks that have been the subject of warnings and announcements have not occurred.<sup>189</sup> Unfortunately, the United States remains at risk, and many officials generally agree that other attacks will occur in the future.

**Background.** Federal resources have been used for years to respond to domestic emergencies. The National Guard, established over a century ago, has a

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<sup>186</sup>P.L. 105-277, 112 Stat. 2681-567.

<sup>187</sup>“For costs of providing operational and perimeter security at the 2002 Winter Olympics in Salt Lake City, Utah,” 115 Stat. 188.

<sup>188</sup>P.L. 107-71, 115 Stat. 597.

<sup>189</sup>Among the most publicized events have been reported plans by a terrorist to smuggle a nuclear weapon into New York City in October 2001, reports later found to be false, and the interception of an individual allegedly investigating the possible use of a radiological dispersion device in the United States. See: Massimo Calabresi and Romesh Ratnesar, “Can We Stop the Next Attack?,” *Time*, v. 159, March 11, 2002, p. 20-37; Bob Drogin, Eric Lichtblau, and Josh Meyer, “‘Dirty Bomb’ Probe Widens,” *Los Angeles Times*, June 12, 2002, p. A1.

joint federal and state mission and a long history, according to one report, “in emergency management and disaster response.”<sup>190</sup> As summarized by another source, “Each year, in virtually every state, Guard members combat floods, forest fires, hurricanes, snow emergencies, and civil disturbances.”<sup>191</sup> Also, in 1984, Congress authorized the attorney general to provide resources (funds, equipment, information, and personnel) to state and local law enforcement agencies overwhelmed by an emergency situation “which is or threatens to become of serious or epidemic proportions.”<sup>192</sup> While funding has been provided for this purpose in past years, none has been available since FY1995.<sup>193</sup> In addition, Congress has appropriated funds in supplemental legislation to reimburse local law enforcement agencies for costs associated with federal activities (police costs associated with presidential inauguration activities)<sup>194</sup> or for a disaster that initially was thought to be caused by a terrorist act (the costs associated with the TWA 800 crash off Long Island).<sup>195</sup>

The task of meeting the costs of terrorism prevention and enhanced security is high. One economist reportedly calculated that “security decisions made in the first weeks after September 11 will cost the U.S. economy \$236 billion a year,” including federal and non-federal security forces as well as the cost of higher insurance payments.<sup>196</sup> Some local governments have difficulty meeting these costs, as noted by one county official: “Minus the funding, it’s going to be difficult to implement the system Ridge wants.”<sup>197</sup> In response to requests from mayors seeking reimbursement for overtime expenses of public safety officers assigned to work after alerts are issued, the director of the Office of Homeland Security reportedly stated that:

it would be a mistake for the federal government to take on those costs directly but that he was open to the possibility of making a portion of the \$3.5 billion the

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<sup>190</sup>National Academy of Public Administration, *The Role of the National Guard in Emergency Preparedness and Response* (Washington: Jan. 1997). Appendix E of the report summarizes some relatively recent activities of Guard forces in disaster response and the management of civil disorders.

<sup>191</sup>U.S. Advisory Commission on Intergovernmental Relations, *The National Guard: Defending the Nation and the States*, A-124 (Washington: April 1993), p. 21.

<sup>192</sup>P.L. 98-473, 98 Stat. 2102, 42 U.S.C. 10501-13.

<sup>193</sup>Source: Telephone conversation with Greg Morris, U.S. Department of Justice, Feb. 7, 2002.

<sup>194</sup>For example, Congress appropriated \$5.7 million for inaugural costs incurred by the District of Columbia government in 1997. Doug Struck, “Holiday on a Holiday Shortchanges Some,” *The Washington Post*, Jan. 7, 1997, p. A7.

<sup>195</sup>“Provided further, That notwithstanding any other provision of law, of the amount provided to the National Transportation Safety Board, not more than \$6,059,000 shall be made available to the State of New York and local counties in New York, as reimbursement for costs incurred in connection with the crash of TWA Flight 800.” P.L. 105-18, 111 Stat. 195.

<sup>196</sup>John Maggs, “From Guns to Butter?,” *The National Journal*, v. 34, Jan. 5, 2002, p. 24.

<sup>197</sup>Statement of Javier Gonzales in: Beverly Schlotterbeck, “Homeland Security Alert System Gets Passing Grade,” *County News*, March 25, 2002, p. 1.

administration wants to distribute to states and localities this year for homeland defense become 'a block grant within a block grant,' available for cities to use as they see fit. Ridge suggested that perhaps 10 percent of the money could subsidize overtime.<sup>198</sup>

### **Policy Options.**

***Maintain the Status Quo.*** The work of the FBI and other federal agencies, along with the emergency law enforcement assistance authority granted the attorney general, arguably provides sufficient authority for a range of federal resources to be provided to non-federal government agencies before and after terrorist attacks. In addition, the National Guard has exercised a long-standing role during domestic emergencies, and military installations have established procedures for providing assistance after disasters and disturbances.<sup>199</sup> State and local governments also dedicate non-federal resources to meet the contingencies associated with threatened terrorist acts.

***Pro.*** Through appropriations, Congress can ensure that adequate funding exists to provide emergency law enforcement assistance under existing authority. The decision by the director of the OHS to issue a security alert under the advisory system indicates that public safety activities are encouraged by the federal government. Accordingly, it may be argued that sufficient authority exists to reimburse states and localities for some of the non-federal costs of complying with the alerts issued by OHS, should Congress decide to do so.

***Con.*** The cost of paying expenses associated with security alerts may lead some to urge the director of OHS to exercise caution in issuing warnings of possible terrorist actions. As a result, the Director may be placed in the difficult position of having to weigh the degree of risk with cost evaluations in deciding whether to issue an alert. As it is difficult, if not impossible in some cases, to make that determination, Congress may decide that the emergency law enforcement authority is insufficient to guard against terrorist threats. Also, state and local officials may contend that existing authority is deficient and that new authority is needed to provide assistance associated with alerts.

***Enactment of New Legislation.*** Congress might consider legislation that increases the federal role in counterterrorism efforts in the United States. For example, it could authorize the Director of FEMA, the attorney general, the secretary of the proposed Department of Homeland Security, or the heads of other executive agencies to provide technical assistance or funds to state and local governments to help meet expenses incurred in responding to high security alerts issued by federal officials.

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<sup>198</sup>David S. Broder, "Mayors Seek Clear Security Plan," *The Washington Post*, June 18, 2002, p. A10.

<sup>199</sup>For example, regulations of the Department of the Air Force concerning civil disturbance and disaster assistance are found at 32 CFR Part 809a.

*Pro.* Some non-federal officials might argue for higher levels of support and financial reimbursement from the federal government because the destruction in New York City was caused by an act of war, thereby directly implicating the federal government in its aftermath. Enactment of legislation authorizing federal payments for the costs of meeting security alerts might be considered another element of federal responsibility.

*Con.* The warnings issued by the attorney general, or other officials, are a necessary and proper function of a federal official, but such warnings do not constitute federal mandates. Therefore, new legislation that authorizes compensation is unnecessary because the federal role is one of assisting and supplementing, not mandating, state and local actions.

***Detail National Guard Units.*** National Guard costs are covered by the federal government when those troops are tasked for specified exercises and other duties.<sup>200</sup> Legislation might be considered by Congress to authorize National Guard units to be placed under operational control of federal law enforcement agencies, giving federal officials responsibility for paying their costs.<sup>201</sup> This option could also be accomplished without legislative action through a decision by the President to federalize the National Guard units of one or more states. As described in one media report: “For an exclusively federal responsibility, such as guarding the borders or oceans, when the Guard was mobilized for federal purposes, the secretary of defense would lead.”<sup>202</sup> The author noted that not all federal responsibilities undertaken by National Guard units, however, would be controlled (and therefore paid for) by the Department of Defense. “Even if the Guard were tasked with a federal function, such as assisting at airports but it took place within a state without a declaration of emergency, the governor would be in charge, of course coordinating with national authorities.”<sup>203</sup>

*Pro.* The integration of federal law enforcement and military personnel could result in an efficient use of federal resources. As commander-in-chief and as the lead administrator of executive branch, the President would exercise ultimate authority over civilian and military personnel and could hypothetically ensure coordination of all dedicated federal resources. The National Guard, as the militia of the states as well as a federal military reserve force, could be used for these purposes without raising concern over the use of active Army troops for domestic purposes.

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<sup>200</sup>32 U.S.C. 503.

<sup>201</sup>This proposal, reportedly under consideration by the Bush Administration, is taken from: Brigadier General Joseph R. Barnes, “Amend the Stafford Act to Fund Emergency State Use of the National Guard,” *Journal of Homeland Security*, at: [<http://www.homelandsecurity.org/journal/Commentary/displayCommentary.asp?commentary=12>], visited April 26, 2002. Related to this option, one news report indicated that Homeland Security Director Ridge “held out the possibility of National Guard troops being made more available to mayors to share the security work.” See: David S. Broder, “Mayors Seek Clear Security Plan,” *The Washington Post*, June 18, 2002, p. A10.

<sup>202</sup>Donald Devine, “Bold Military Reform Rollout,” *The Washington Times*, April 26, 2002, p. A17.

<sup>203</sup>*Ibid.*

*Con.* The inclusion of the military in domestic law enforcement, or homeland security matters, would reverse a long tradition of keeping such functions separate. The Posse Comitatus Act which proscribes the use of the military to execute domestic laws except as authorized by the Constitution or statute, rests in “an American tradition, born in England and developed in the early years of our nation, that rebels against military involvement in civilian affairs.”<sup>204</sup> There also could be issues of command and control if federal civilian agencies were put in command of National Guard units which have been federalized.

***Authorize Stafford Act Funds for National Guard Details.*** The Stafford Act could be amended to authorize the President to use National Guard troops for security needs associated with alerts issued by the director of the OHS.<sup>205</sup> Section 403(c) of the Act authorizes the President to direct the secretary of defense to use DoD resources “during the immediate aftermath of an incident which may ultimately qualify” for Stafford Act assistance.<sup>206</sup> The secretary of defense could be authorized, at the request of a governor, to mobilize National Guard troops in any area or type of facility identified by the director of the OHS as being vulnerable to a high level threat.

*Pro.* This option follows on existing provisions of the Stafford Act, and appears consistent both with the intent of Section 403(c), which authorizes federal assistance before a major disaster declaration is issued, and Section 406(a), which authorizes reimbursement for “the costs of mobilizing and employing the National Guard for performance of eligible work.”<sup>207</sup> Reimbursement would proceed in the manner currently used by FEMA under Section 406(f) authority.<sup>208</sup>

*Con.* Federal Stafford Act costs could increase as the war on terrorism continues, particularly if high security alerts are issued more frequently by the director of OHS. Since it is virtually impossible to protect every potential terrorist target, it could require federal officials to make difficult decisions as to priorities. Some would contend that such decisions are more productively made at the state level.

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<sup>204</sup>U.S. Library of Congress, Congressional Research Service, “Restrictions on Military Assistance to Domestic Authorities,” by Charles Doyle, at: [<http://www.congress.gov/brbk/html/ebter156.html>], visited April 26, 2002.

<sup>205</sup>This option is based on a proposal in: Barnes, “Amend the Stafford Act to Fund Emergency State Use of the National Guard.” The author suggests, as one option, that the President be authorized to issue a “security emergency” declaration in order for the National Guard troops to be considered federalized.

<sup>206</sup>42 U.S.C. 5170b(c)(1).

<sup>207</sup>42 U.S.C. 5172(a)(2).

<sup>208</sup>42 U.S.C. 5172(f). The Disaster Mitigation Act (DMA) of 2000 struck this provision. However, under interim authority granted in the DMA, the provisions of Section 406(f) remain in effect until the President issues newly authorized management cost rates. Sec. 202 of P.L. 106-390, 114 Stat. 1560.



**Modified Military Role.** There is little question that the Department of Defense is going to be more involved in combating terrorism in the United States. Domestic defense operations, however, have not been a primary undertaking for the armed forces since the 19<sup>th</sup> century. Consequently, there is an on-going debate about the extent to which DOD resources should be committed to domestic antiterrorism efforts, the manner of their employment, and the resource, legal, and organizational repercussions of such a commitment.<sup>209</sup> On October 1, 2002, a new combatant command (Northern Command or NORTHCOM) will become operational. Its area of responsibility will include the United States, Canada, Mexico, and much of the Caribbean. It will subsume the existing North American Air Defense Command. Aside from these parameters, few details concerning its projected resources, missions, and organization have been released. Congress has authorized the President, through the secretary of defense and in consultation with the Joint Chiefs of Staff, the authority to establish and structure combatant commands.<sup>210</sup> Congress, however, has substantial precedent for involvement in this process.<sup>211</sup>

*Pro.* Proponents of greater military involvement in homeland security operations maintain that the Department of Defense has unique resources, both in capability and size, that are critical to domestic antiterrorism efforts. DOD, they argue, must be prepared to employ these resources in a rapid and decisive manner. Examples include fighter-interceptor aircraft, chemical-biological defense assets, and nuclear weapon detection and recovery teams. In addition, only the Department of Defense has large personnel and logistical resources that can be made available rapidly nationwide to assist in incident response and recovery operations. Consequently, proponents believe that a seamless integration of these resources with other federal and state/local assets would significantly improve antiterrorism response and deterrence.

*Con.* Those who have reservations about increasing DOD involvement in domestic antiterrorism efforts generally acknowledge there is little question that some unique DOD assets, such as air defense, can and should be utilized in antiterrorism efforts. However, they maintain that these demands must be carefully balanced against the requirements for overseas military operations. They believe that the potential for diversion of financial, material, and personnel resources is great, and that DOD, through its new Northern Command, should be allowed to manage their allocation. They argue that the Department of Defense should generally be the source of last resort, and the civilian sector should create or bolster its own antiterrorism capabilities where possible. There are also concerns that excessive reliance upon DOD resources could encourage complacency among civilian authorities regarding their own antiterrorism programs, leading them to seek to place an ever-increasing share of antiterrorism responsibilities on the armed services. In addition, there are those who have fundamental reservations about the domestic use

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<sup>209</sup>For a discussion see: Steven J. Tomisek, "Homeland Security: The New Role for Defense," *Strategic Forum*, no. 189, Feb. 2002, p. 8.

<sup>210</sup>10 U.S.C. 161.

<sup>211</sup>For examples, see P.L. 99-661, Title XIII, Sec. B, 100 Stat. 1783, regarding the Special Operations Command, and P.L. 99-433, Sec. 212, 100 Stat. 1012, regarding the missions, responsibilities, and force structure of unified combatant commands.

of armed forces in what could become law enforcement situations, i.e. *posse comitatus* violations.<sup>212</sup>

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<sup>212</sup>See CRS Report RS21012, *Terrorism: Some Legal Restrictions on Military Assistance to Domestic Authorities Following a Terrorist Attack*, by Charles Doyle.

## Environmental Hazard Assessment and Communication<sup>213</sup>

**Issue Summary.** In the aftermath of a disaster, local residents and emergency workers require information about the safety of environmental conditions and necessary protective measures to be taken. When the attack on the WTC caused buildings to collapse, creating tons of dust and releasing a mixture of toxic materials into the air, local, state, and federal agencies promptly began monitoring air quality, and the U.S. Environmental Protection Agency (EPA) soon issued public assurances that the air was safe. Nevertheless, there are continuing concerns about the quality of the air in the lower Manhattan area and potential health impacts. For months after the disaster, residents and workers in the area continued to report respiratory difficulties and related problems.<sup>214</sup>

Some have accused the EPA of failing to protect the health of the general public and first responders by issuing inconsistent and misleading statements about the safety of air quality in the vicinity of the WTC.<sup>215</sup> Release of some air quality information was delayed for weeks, reducing its utility to the community. Several scientists have questioned the accuracy of EPA hazard assessments (and related public statements). Some have raised the question of whether legislation is needed to ensure health protection from environmental pollution for victims and emergency responders in future disaster recovery operations.

**Issue Analysis.** People potentially affected adversely by releases of hazardous chemicals expect environmental and public health officials to evaluate health risks quickly and accurately and clearly communicate the results to the community. Emergency personnel need such information so they can protect themselves from short- and long-term adverse health effects that would result from high-level, short-term exposure to dangerous chemicals, as well as to guide their efforts to mitigate harm to the general public. The public needs health risk information so that individuals may choose rationally, based on personal judgment and values, a level of protection for themselves and others for whom they feel responsible. Because information about health risks can be provided only by environmental and public health experts, government officials with such expertise arguably have a responsibility to make such information available to the affected public.

**Application to Terrorist Attacks.** According to news reports and congressional testimony, statements made by the EPA and local officials shortly after September 11 might have provided misleading information to people in New York

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<sup>213</sup>Written by Linda-Jo Schierow, Resources, Science, and Industry Division.

<sup>214</sup>Charisse Jones, "Anxieties Over Toxins Rise at Ground Zero," *USA Today*, Feb. 6, 2002; Johnson, Kirk. "Air Testing after September 11 is Both Perplexing and Reassuring." *New York Times*, May 15, 2002.

<sup>215</sup>For example see statement of Representative Jerrold Nadler, U.S. Senate, Subcommittee on Clean Air, Wetlands, and Climate Change, Committee on Environment and Public Works, *Impacts on air quality of the September 11th Attacks and Possible Health Effects in the Area of the World Trade Center*, hearing, February 11, 2002, [[http://www.senate.gov/~epw/Nadler\\_021102.htm](http://www.senate.gov/~epw/Nadler_021102.htm)], visited June 10, 2002.

City, including first responders. EPA stated repeatedly that monitoring had not found levels of pollutants posing significant health risks beyond Ground Zero.<sup>216</sup> Critics have charged that the statements led many to believe that the air pollution, smoke, and dust resulting from the collapse of the World Trade Center towers posed no serious health concerns in either the short- or long-term.<sup>217</sup> In addition, some have complained of long delays in the release of air quality data.<sup>218</sup>

EPA officials have defended the agency's performance, arguing that it responded to the City's request for assistance "promptly and thoroughly," as required under the *Federal Response Plan* (FRP). The EPA administrator for Region II, which coordinated the regional response, has denied that the Agency intentionally misled the public, and stated that the agency never dismissed risks to sensitive populations (for example, asthmatics) or to site workers.<sup>219</sup>

At the WTC site, EPA took numerous measurements of air quality. Through September 30, 2001, EPA, together with the Occupational Safety and Health Administration (OSHA), collected 835 ambient air samples in the metropolitan area. Results are available on EPA's website.<sup>220</sup>

Out of a total of 442 air samples EPA took at Ground Zero and in the immediate area, only 27 had levels of asbestos above the standard EPA uses to determine if children can re-enter a school after asbestos has been removed – a stringent standard based upon assumptions of long-term exposure. OSHA has analyzed 67 air samples from the same area, and all were below the OSHA workplace standard for asbestos.<sup>221</sup>

Based on monitoring data, EPA determined that WTC hazards to the general public were below the "levels of concern" established for the site.<sup>222</sup> ("Levels of concern" are discussed below.) Since September 2001, levels of pollution have decreased, but EPA continues to measure air quality at 29 fixed monitoring sites in the New York City area.

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<sup>216</sup>For example, see EPA's Web site summarizing the results of air monitoring, [<http://www.epa.gov/wtc/questions/index.html>], visited June 10, 2002.

<sup>217</sup>"Kept in the dark about WTC air," *Newsday*, Feb. 13, 2002, p. A17; *Impacts on Air Quality of the September 11th Attacks and Possible Health Effects in the Area of the World Trade Center*, [[http://www.senate.gov/~epw/Nadler\\_021102.htm](http://www.senate.gov/~epw/Nadler_021102.htm)], visited June 10, 2002.

<sup>218</sup>Statement by Representative Jerrold Nadler in: *Impacts on air quality of the September 11th attacks and possible health effects in the area of the World Trade Center*.

<sup>219</sup>Herzfeld, John. "Senators question EPA handling of health risks from Trade Center site," *Daily Environment Report*, Feb. 12, 2002, p. A-1.

<sup>220</sup>EPA Response to September 11, EPA and OSHA Web Sites Provide Environmental Monitoring Data From World Trade Center and Surrounding Areas, [<http://www.epa.gov/wtc/>], visited June 10, 2002.

<sup>221</sup>*Ibid.*

<sup>222</sup>*Ibid.*

Notwithstanding these efforts, an internal review of the events of September 11 and EPA responses found that public information dissemination was one of the means by which major lessons were learned. The report acknowledges that, although some helpful information was provided by EPA during the response, “other information fueled the fears of an anxious public.”<sup>223</sup> The agency recognized that its health statements sometimes may have been subject to misunderstanding, as follows:

Although OAR [the Office of Air and Radiation] is EPA’s designated lead for health effects and risk communication for air pollution, OAR sometimes had to correct potentially misleading information after it had been issued.<sup>224</sup>

EPA concluded that, overall, its “existing mechanisms for decision-making and communication in Agency emergency responses ... were not well utilized.”<sup>225</sup>

According to EPA, data obtained and distributed by different agencies sometimes appeared inconsistent due to use of different sampling and analytic methods.<sup>226</sup> New York City collected and made available to the public its own air quality data, but asked EPA to interpret them.<sup>227</sup> To interpret data, however, requires knowledge of how and when samples were taken, handled, and analyzed. EPA observed, “When there are many agencies involved in gathering monitoring data for a response, efficient consolidation and interpretation requires up-front coordination of sampling and analysis protocols.”<sup>228</sup>

Several independent scientists and one EPA scientist publicly questioned the accuracy of EPA statements about the safety of the environment in lower Manhattan. Generally, they criticized EPA’s choice of monitoring equipment and health risk standards.<sup>229</sup> Other independent scientists have agreed with EPA statements regarding the safety of breathing New York City air following the attacks.<sup>230</sup> For example, Paul Liroy, an expert on exposure to toxic substances and associate director of the Environmental Occupational Health Sciences Institute in New Jersey,<sup>231</sup> stated

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<sup>223</sup>U.S. Environmental Protection Agency, *Lessons Learned in the Aftermath of September 11, 2001* (Washington: GPO, Feb. 1, 2002), p. ES-7.

<sup>224</sup>*Ibid.*

<sup>225</sup>*Ibid.*, p. 3-3.

<sup>226</sup>*Ibid.*, p. 2-11.

<sup>227</sup>*Ibid.*, p. D-7.

<sup>228</sup>*Ibid.*, p. 2-11.

<sup>229</sup>“Scientist challenges EPA to produce risk assessment of WTC site,” *Risk Policy Report*, Mar. 19, 2002. Online access through InsideEPA.com, [<http://www.insideepa.com/>], visited June 11, 2002.

<sup>230</sup>Charisse Jones, “Anxieties over toxins rise at Ground Zero,” *USA Today*, Feb. 6, 2002, [<http://www.USAToday.com/news/nation/2002/02/07/usat-wtc-acov.htm>], visited June 11, 2002.

<sup>231</sup>A joint institute of Rutgers University, and the University of Medicine and Dentistry of New Jersey - Robert Wood Johnson Medical School.

“... for the most part, people didn’t get a high enough or long enough exposure for long-term concerns.”<sup>232</sup>

**Examination of Information Failures.** There are at least three possible explanations for the allegations about EPA health statements, any or all of which might have given rise to concerns –

- EPA statements were not understood;
- EPA statements were not believed; or,
- EPA statements were based on inadequate monitoring data or health standards.

Available information is not sufficient to judge the relative merit of these three explanations, alternative explanations, or of the allegations themselves. What follows is a description of the three hypotheses and some of the events or statements that support or undermine them.

**Information Misunderstandings.** The first possibility is that New Yorkers did not receive the information that EPA meant to convey – that is, either EPA communicated information in an unclear manner, or the news media and the public did not understand what EPA communicated. For example, early EPA statements may have been too general, meant to reassure the nation, and not to advise individuals who lived or worked in the vicinity of the WTC. Also, EPA officials may have meant to say that most New Yorkers should not fear severe, long-term health problems. However, such statements appeared to deny the short-term effects some people were experiencing from breathing dust and smoke. In fact, as compared to earlier messages, later EPA messages appear to have been more detailed and more targeted to specific segments of the population.

The change from general to more specific statements and to targeted audiences could have given the appearance that EPA’s messages were inconsistent. Similarly, when EPA officials used words and phrases with specific, technical meanings for environmental professionals—e.g., “level of concern”—they may not have been understood by the general public, and some messages might have been misinterpreted. In the immediate aftermath of the collapse of the towers, inexperience, stress, and fatigue also may have been factors affecting communications.

**Information Credibility.** A second possible explanation for concerns about EPA statements is that, although they were accurate and understood correctly, some people may have thought the statements were not credible. People who were having trouble breathing in their homes or offices due to dust and smoke, or who heard about others speak of health concerns, may have rejected EPA statements because they seemed inconsistent with their own personal experiences. Also, distrust of EPA communications may have been fueled by communications from other environmental

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<sup>232</sup>Jones, “Anxieties Over Toxins Rise at Ground Zero.”

or health authorities that seemed contradictory, or by media reports that some independent experts had challenged the scientific basis for EPA statements.

Delay in releasing information also may have impaired trust. As noted by EPA in *Lessons Learned*, “The public expects timely access to environmental information on risks posed by the emergency. If that information is not provided in a timely manner, the delay will engender in the public a sense of distrust.” At the WTC site, EPA observed problems in “the time it took to interpret information, apply standards, and communicate risks.”<sup>233</sup> “The dissemination of EPA’s health-related sampling results to non-EPA, front-line responders was delayed for at least two weeks.”<sup>234</sup> EPA noted a need “to develop means to get data results to non-EPA responders quickly to ensure effective personnel health and safety decisions.”<sup>235</sup>

EPA employees identified at least three reasons for the delays: (1) the difficulty of data interpretation due to lack of appropriate exposure guidelines (health-based standards) for evaluating risks of some hazardous substances, (2) the need to determine the quality and accuracy of sampling data obtained from various laboratories, and, (3) scrutiny of EPA sampling data for national security purposes.<sup>236</sup> Many EPA employees believe that delays were due primarily to national security concerns.

Many EPA employees believe that although EPA developed timely information for the responders and the public, the National Security Council, White House, and the Council on Environmental Quality took too long to scrutinize information that EPA intended to distribute in the first three weeks.<sup>237</sup>

In addition, it is possible that some New Yorkers did not feel they knew whom to believe, given the number of agencies and jurisdictions involved in the response action, seemingly conflicting results from air quality monitoring efforts, and confusion about the roles of various agencies.<sup>238</sup> EPA stated in *Lessons Learned* that its authority often was not recognized by responders, and even EPA staff themselves were unclear about their roles under the circumstances.<sup>239</sup> In part, confusion about roles may have been inevitable, given that federal, state, and local responders and the public had never before confronted terrorism attacks with such devastating effects within the United States. Mechanisms for coordinating emergency operations had been devised but never tested against a real attack.

It also is possible that existing legal authorities for EPA do not clarify responsibilities for response to an act of terrorism. (Statutory authorities, executive

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<sup>233</sup>*Lessons Learned*, p. D-10.

<sup>234</sup>*Ibid.*

<sup>235</sup>*Ibid.*, p. 2-11.

<sup>236</sup>*Ibid.*

<sup>237</sup>*Ibid.*

<sup>238</sup>*Ibid.*, p. D7 - D8.

<sup>239</sup>*Ibid.*

directives, and agency regulations are described in the “Background” section below.) Under existing authorities, New York City has had jurisdiction over consequence management at the WTC site, direction of the emergency response, and collection of its own monitoring data.<sup>240</sup> After the President issued the major disaster declaration for New York, FEMA, within hours of the attack, assigned to EPA the mission of protecting health and safety of site workers and others in the vicinity from hazardous substances under the FRP. Thereafter, EPA coordinated the responses of federal agencies to the consequences of the release of hazardous substances. In addition, because the WTC was attacked by terrorists, the FBI was the designated Lead Federal Agency (LFA), in charge of managing the crisis overall under terms of the interagency cooperation plan known as *CONPLAN*.<sup>241</sup>

*Information Deficiencies.* A third possible explanation for misunderstandings involving EPA health statements might be that there was a lack of consensus on the accuracy of EPA statements for a number of reasons.<sup>242</sup> First, although EPA officials collected numerous measurements of air quality, the Agency appeared to face difficulties that might have limited the number or quality of measurements. Judgments about the adequacy of EPA monitoring and health assessment, therefore, and the search for any legislative solutions to perceived failures, must be made in the context of the confusion and disorder surrounding the WTC events.

Second, when EPA personnel arrived on the scene to begin monitoring the environment, communications and transportation systems had been disrupted. Monitoring personnel were hampered by smoke, fire, debris, rescue work, and their own protective equipment. Apparently, resources were inadequate. According to EPA, officials were “not adequately prepared to conduct environmental monitoring work on a scale as large as the WTC where electrical power was not available.”<sup>243</sup> Moreover, regional EPA officials responsible for the emergency response found insufficient laboratory capacity to analyze samples quickly. In addition, there were disagreements among EPA scientists and policy officials about which hazardous materials should be monitored.<sup>244</sup>

Third, EPA monitoring and health risk assessment efforts also were challenged by the presence of novel pollutants that were created when the towers burned and collapsed following the impact of fully fueled airliners. For example, asbestos fibers were so finely pulverized that they were difficult to measure and their potential health

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<sup>240</sup>*Lessons Learned*, p. D-7.

<sup>241</sup>U.S. Federal Emergency Management Agency, *United States Government Interagency Domestic Terrorism Concept of Operations Plan* (Washington: Jan. 2001), at: [<http://www.fema.gov/r-n-r/conplan/conplan.pdf>, visited June 11, 2002].

<sup>242</sup>The technical arguments employed by scientists who criticized EPA monitoring methods and safety assessments at the WTC site are beyond the scope of this analysis.

<sup>243</sup>*Lessons Learned*, p. 2-11.

<sup>244</sup>*Lessons Learned*, p. D-6..



effects are unknown.<sup>245</sup> In other cases, it has been reported that metals were vaporized then surrounded and attached to minute cement particles. Again, the long-term health effects that might be associated with such particles remain unknown. Perhaps such particles account for the effects some New Yorkers reportedly have experienced. “[T]here’s enough anecdotal information out there that some good solid studies need to be done to confirm or deny the effects being observed,” according to Dr. Lioy.<sup>246</sup>

Fourth, data interpretation for conventional pollutants has proven difficult, especially with respect to New Yorkers’ health. Little baseline data existed (that is, data on background levels of air pollution and health conditions prior to the tragedy) against which to measure changes in pollutant exposure or subsequent health status. It appears, for example, that some pollutants detected at moderately high levels by monitoring equipment after September 11 (e.g., benzene, a major source of which is motor vehicle emissions and evaporation from gasoline service stations) probably were present prior to that date.

Fifth, another serious challenge was the lack of health-based guidelines for “safe” levels of exposure to many of the pollutants of concern around the WTC site. Where such exposure guidelines exist, they generally applied only to long-term exposure and a few types of health impacts, such as cancer.<sup>247</sup> The need for such standards is illustrated by EPA’s standard operating procedure when it first evaluates a release of hazardous substances. In general, EPA begins testing for pollutants when it first arrives at the site of a hazardous substance release.

EPA determines the seriousness of the threat, and the need for immediate response, based on the toxicity of the substances present and their possible health effects. The information collected by EPA is used by all the agencies involved in the emergency response. EPA response personnel use direct-reading instruments and testing equipment when performing air monitoring. One important goal of monitoring during initial site entry is to establish safety or work zones at the site. As the emergency response action continues, response personnel conduct periodic monitoring to ensure that any new hazards are identified promptly and that appropriate controls are implemented to protect the responders and nearby communities.<sup>248</sup>

In evaluating the “seriousness of the threat,” EPA compares the measured levels of pollutants in the environment to a “level of concern” (LOC), a threshold level above which a health hazard might exist.<sup>249</sup> However, because few health-based

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<sup>245</sup>Kirk Johnson, “What’s in New York Air: Ground Zero Data May Finally Tell,” *The New York Times*, May 15, 2002, p. A19.

<sup>246</sup>Ibid. The issue of the time frames under which such health studies are conducted is discussed in the “Expedited Public Health Studies” section of this report.

<sup>247</sup>*Lessons Learned*, p. D-11.

<sup>248</sup>See information on the EPA Superfund Emergency Response website, at: [<http://www.epa.gov/superfund/programs/er/hazsubs/insites.htm>], visited June 10, 2002.

<sup>249</sup>A more detailed explanation of LOCs is available at the Web site of the National Oceanic (continued...)

exposure guidelines have been established, EPA must first identify or develop suitable “levels of concern” for some pollutants before it can interpret monitoring data and communicate about health risks. Current guidance for establishing LOCs when a chemical spill occurs near a population center indicates that LOCs should be situation-specific but should protect “all segments of the population, including the very young and the very old, pregnant women, and hypersensitive individuals.”<sup>250</sup> If the measured levels of pollution are lower than the LOC, EPA communicates that information to other agencies and the general public, and the agency continues to monitor the air, but no other precautionary action is required. When measured levels of pollutants are above the LOC, responders generally take additional precautions. For example, they don protective equipment, restrict access to the site, and call for technical assistance.

**Background.** To facilitate congressional evaluation of EPA performance and possible means of enhancing future performance, this section provides background information on EPA’s statutory authority for responding to releases of hazardous substances.

**Statutory Authority and Implementation Policy.** EPA’s statutory authority to conduct environmental monitoring, issue health statements, and otherwise respond to a release of a hazardous substance, pollutant, or contaminant primarily derives from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.<sup>251</sup> CERCLA, more popularly known as Superfund, authorizes an immediate EPA response to a public health or environmental emergency due to a chemical release as well as long-term remedial work at contaminated sites where release into the environment of a pollutant or contaminant may present an imminent and substantial danger to the public health or welfare.<sup>252</sup>

CERCLA mandated the establishment of a National Response Team (NRT) made up of 16 federal agencies,<sup>253</sup> chaired by EPA, and required development of the

<sup>249</sup>(...continued)

and Atmospheric Administration, National Ocean Service, Office of Response and Restoration, “Aids for Chemical Accident Responders and Planners.” That office provides and coordinates advice on science and natural resource issues under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). LOCs are used whenever the NCP is in effect, see [<http://response.restoration.noaa.gov/chemaids.html>], visited June 10, 2002.

<sup>250</sup>National Oceanic and Atmospheric Administration, National Ocean Service, Office of Response and Restoration, “Public Exposure Guidelines,” see: [<http://response.restoration.noaa.gov/comeo/locs/expguide.html>], visited June 10, 2002.

<sup>251</sup>42 U.S.C. 9601-9675.

<sup>252</sup>42 U.S.C. 9604(a).

<sup>253</sup>The 16 NRT agencies are: EPA (chair), U.S. Coast Guard (USCG) (vice chair), FEMA, Department of Defense, Department of Energy, Department of Agriculture, Department of Commerce, Department of Health and Human Services, Department of the Interior, Department of Labor, Department of Justice, Department of Transportation, Nuclear Regulatory Commission, Department of State, General Services Administration, and  
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National Contingency Plan (NCP) to coordinate the agencies' responses to environmental releases of hazardous substances, pollutants, and contaminants.<sup>254</sup> EPA and the U.S. Coast Guard (USCG), which has jurisdiction over chemical spills in coastal waters, respond to thousands of oil spills and hazardous substance releases every year, under CERCLA authority.<sup>255</sup>

CERCLA, Section 104(a) provides –

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.<sup>256</sup>

The Act also provides that:

...to the extent authorized by this section [104], the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.<sup>257</sup>

With regard to the issues involved at the WTC site, the statute specifically authorizes environmental monitoring and assessment, as follows:

... whenever the President has reason to believe that a release has occurred ..., he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the

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<sup>253</sup>(...continued)

Treasury Department.

<sup>254</sup>40 CFR Part 300, §300.1-300.920. The NCP was originally established under the Clean Water Act to coordinate the responses of federal agencies to oil spills in coastal areas. CERCLA required substantial revisions to the NCP.

<sup>255</sup>*Lessons Learned*, Appendix C.2, describes enabling statutes, regulations, and policies that authorize EPA response actions. Other enabling laws include the Clean Water Act (33 USC 1321), the Oil Pollution Act (33 USC 1321, 1486, 1503, 2701-2719), the Superfund Amendments and Reauthorization Act (SARA, Public Law 99-499), and the Emergency Planning and Community Right to Know Act (EPCRA, 42 USC 11001-11050). For more information see: [<http://www.epa.gov/oerrpage/oilspill/lawsregs.htm>], visited June 11, 2002.

<sup>256</sup>42 U.S.C. 9604(a)(1).

<sup>257</sup>42 U.S.C. 9604(a)(4).

hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment.<sup>258</sup>

CERCLA also directs the President to provide information to citizens affected by hazardous releases.<sup>259</sup> The NCP specifies that the federal on-scene coordinator (OSC, designated by the EPA regional administrator) must “ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of” the NCP.<sup>260</sup> That section (of the NCP) also sets forth procedures for the dissemination of information to the public, as follows:

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. ... They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing, as appropriate, a Joint Information Center bringing together resources from federal and state agencies ...

(B) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. ... All federal news releases or statements by participating agencies should be cleared through the OSC ...

The Stafford Act provides additional authority to respond to releases of hazardous materials in that it directs the President (who has delegated authority to FEMA) to coordinate provision of “technical and advisory assistance” to states and communities where a major disaster emergency has been declared. Assistance is authorized for “issuance of warning of risks or hazards,” as well as “public health and safety information, including dissemination of such information.”<sup>261</sup>

FEMA coordinates federal assistance provided by 27 federal agencies under the Stafford Act based on the Federal Response Plan (FRP). Regulations implementing the FRP establish 13 emergency support functions that federal agencies may provide to states after the President issues a major disaster or emergency declaration. If an emergency or major disaster involves release of a hazardous substance, FEMA, in consultation with EPA, determines whether Emergency Support Function #10, Hazardous Materials (ESF#10), should be activated to *supplement* state and local efforts. If ESF#10 is activated, the FRP designates EPA as lead agency to coordinate efforts of all federal agencies responding to the release, and requires use of NCP procedures to prevent, minimize, or mitigate threats to human health, welfare, or the environment caused by hazardous substance releases and oil discharges.<sup>262</sup> The FRP

<sup>258</sup>42 U.S.C. 104(b)(1).

<sup>259</sup>42 U.S.C. 9613(k)(1).

<sup>260</sup>National Contingency Plan, 40 CFR 300.135(n).

<sup>261</sup> 42 U.S.C. 5170a(3), 5192(a).

<sup>262</sup>*Federal Response Plan*, [<http://www.fema.gov/r-n-r/frp/frpbpln.htm>], visited June 11, (continued...)

authorizes specific environmental monitoring and response activities. “Appropriate response actions under the NCP include efforts to detect, identify, contain, clean up, or dispose of released hazardous materials.”<sup>263</sup>

A key difference between EPA authority to act under CERCLA and under the Stafford Act is that, under the former, EPA has direct authority to respond. Under the Stafford Act, a major disaster or emergency first must be declared, then FEMA must determine, in consultation with EPA, whether ESF#10 activation is required to supplement the efforts of state and local governments. It is unclear what effect, if any, activation of ESF#10 might have on EPA’s ability to exercise CERCLA authority.

EPA’s exercise of its authority to respond to hazardous substance releases can also be influenced by other authorities, including executive orders on the Superfund,<sup>264</sup> and federal emergency preparedness.<sup>265</sup> Such authority also extends from several Presidential Decision Directives (PDDs) issued through the National Security Council, including PDD 39 (Crisis Management), PDD 62 (Combating Terrorism), PDD 63 (Critical Infrastructure Protection), and PDD 67 (Ensuring Constitutional Government and Continuity of Government Operations).<sup>266</sup> Generally, these directives have been issued to clarify responsibilities of various governmental agencies, including EPA, when an act of terrorism or other catastrophe with environmental consequences occurs. The PDDs are classified, but in general they appear intended to expand EPA’s duties by providing explicit instructions for implementing existing authority under such circumstances.<sup>267</sup> In particular, PDD 39 reportedly directs EPA to respond to releases of certain chemical, biological, and other weapons of mass destruction under the NCP and FRP. Executive orders and presidential directives are administrative, neither increasing nor decreasing statutory authority.

As noted above, the Stafford Act authorizes EPA to respond to a release during a major disaster or emergency only if the President has declared an emergency or major disaster and EPA assistance is needed to supplement the efforts of state and local governments. FEMA regulations and the presidential directives emphasize the

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<sup>262</sup>(...continued)

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<sup>263</sup>Ibid.

<sup>264</sup>U.S. President (Reagan), “Superfund Implementation,” Executive Order 12580, *Federal Register*, vol. 52, Jan. 23, 1987, p. 2923.

<sup>265</sup>U.S. President (Reagan), “Assignment of Emergency Preparedness Responsibilities,” Executive Order 12656, *Federal Register*, vol. 53, Nov. 18, 1988, p. 47491.

<sup>266</sup>PDDs are discussed in CRS Report 98-611, *Presidential Directives: Background and Overview*, by Harold Relyea. The unclassified portions of PDD text are available through the Federation of American Scientists’ Intelligence Resource Program website, at: [<http://www.fas.org/irp/offdocs/pdd/index.html>], visited June 11, 2002.

<sup>267</sup>U.S. Environmental Protection Agency, Chemical Emergency Preparedness and Prevention Office (CEPPO), “Counter-Terrorism: EPA’s Role and Authority” at: [<http://www.epa.gov/ceppo/ct-epro.htm>], visited June 11, 2002.

respective roles of the federal and state governments in responding to emergencies. The roles are delineated according to the following principles contained in the CONPLAN as follows:

The laws of the United States assign primary authority to the Federal government to prevent and respond to acts of terrorism or potential acts of terrorism....The laws of the United States assign primary authority to the State and local governments to respond to the consequences of terrorism; the Federal Government provides assistance as required.<sup>268</sup>

Under the CONPLAN provisions, the FBI takes the lead role for preventing future incidents and crisis management aspects of the incident in the immediate aftermath through designation of the on-scene commander (OSC). CONPLAN also designates FEMA as the lead federal agency (LFA) for consequence management, but FEMA does not assume that role until the Attorney General “transfers the LFA role from the FBI to FEMA.”<sup>269</sup> Other federal agencies, including EPA, serve as support agencies to the FBI and to FEMA. According to the CONPLAN,

EPA provides technical personnel and supporting equipment to the LFA during all aspects of a [Weapon of Mass Destruction (WMD)] terrorist incident. ... EPA assistance and advice includes threat assessment, consultation, agent identification, hazard detection and reduction, environmental monitoring; sample and forensic evidence collection/analysis; identification of contaminants; feasibility assessment and clean-up; and on-site safety, protection, prevention, decontamination, and restoration activities. EPA and the United States Coast Guard (USCG) share responsibilities for response to oil discharges into navigable waters and releases of hazardous substances, pollutants, and contaminants into the environment under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA provides the predesignated Federal On-Scene Coordinator for inland areas and the USCG for coastal areas to coordinate containment, removal, and disposal efforts and resources during an oil, hazardous substance, or WMD incident.<sup>270</sup>

In summary, EPA has broad statutory authority to respond to releases of hazardous materials, contaminants, or pollutants *regardless of cause*, as long as the release “constitutes a public health or environmental emergency, and no other person with the authority and capability to respond to the emergency will do so in a timely manner.”<sup>271</sup> Under the Stafford Act, the agency has authority to coordinate federal assistance to states with regard to hazardous materials when given a mission assignment by FEMA through activation of ESF#10 under the *Federal Response Plan*. However, EPA’s role might not be clear in all situations. For example, if there is a deliberate release of hazardous materials (e.g., a nerve gas) by a terrorist, if the release does not result in a presidential declaration of an emergency or major disaster

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<sup>268</sup>CONPLAN, p. 7.

<sup>269</sup>Ibid, p. 8.

<sup>270</sup>Ibid., p. 5.

<sup>271</sup>42 U.S.C. 9604(a)(4).

under the Stafford Act, or if state officials do not request federal assistance, the uncertain line of authority could result in confusion.<sup>272</sup>

**Policy Options.** The need for timely and clear information about health risks may be especially critical to the physical and emotional well-being of victims of biological, chemical, or nuclear attacks. At the same time, the problems in obtaining, analyzing, and communicating information about contamination levels and health risks may be even greater in some circumstances than those experienced in New York City. Air contaminants, whether anthrax, mustard gas, radiation, or some other agent, would be much more dangerous to monitoring personnel than the levels of asbestos, PCBs, and other chemicals found at the WTC site. Moreover, it is likely that fewer emergency workers would have the training to collect such samples, and that fewer laboratories would be equipped to handle the analysis. Finally, communications following an attack by an unconventional weapon likely could be emotionally charged, so that any difficulties (such as those that result from conflicting authorities) in quickly conveying accurate health messages might be exacerbated.

If the scale of an attack were much greater than the attacks on September 11, EPA might be quickly overwhelmed. In *Lessons Learned*, EPA acknowledges that:

... the events of September 11 presented an almost overwhelming challenge to the Agency's resources. The potential resource demands of an actual NBCR (nuclear, biological, chemical, or radiological) incident, in which the Agency would play a much more significant role, should be a critical concern for the Agency.<sup>273</sup>

In addition, due to national security concerns, delays in releasing certain data to the public might be greater, eroding public trust and the utility of data to the community.

Many policy options might be considered by Congress with regard to alleged inadequacies of EPA public health statements or responses to those announcements. Five approaches are discussed below.

**Maintain the Status Quo.** One option is to take no legislative action, assuming that any emergency operation is going to receive some criticism, deserved or not. The WTC attack was unprecedented in scope and character, and EPA has undertaken a fairly comprehensive self assessment in *Lessons Learned*. Current statutory authorities may be considered sufficient; administrative procedures, however, could require adjustment.

**Pro.** Proponents of this option might argue that agencies should reconsider existing administrative mechanisms to correct any perceived deficiencies in EPA performance. EPA has internal procedures for evaluating and improving its performance. Interagency coordination mechanisms also exist, and interagency

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<sup>272</sup>Some of these issues surrounding the cause of a disaster are discussed in the section "Definitions of Major Disaster and Emergency" in this report.

<sup>273</sup>EPA. *Lessons Learned in the Aftermath of September 11, 2001*. Feb. 1, 2002. p. 1-9.

coordination is mandated for emergency planning in the Stafford Act and PDDs 39, 62, and 63. In addition, EPA performance is evaluated annually by the appropriations committees and the OMB. Existing and planned reforms within EPA may be adequate to prepare the agency for future terrorist attacks. The EPA report *Lessons Learned* can guide internal discussions and serve as a checklist for needed changes in resource allocation, training, interagency coordination, and procedures. Congress would hold EPA accountable for implementing any needed improvements.

*Con.* On the other hand, some might argue that a congressional investigation, and perhaps subsequent legislation, are needed to ensure that EPA has the authority it needs to monitor environmental quality, evaluate health risks, and communicate effectively and quickly with communities and first responders, particularly in the event of a terrorist attack using chemical, biological, or nuclear weapons. They may contend that the mix of authorities requires clarification and emendation.

***Establish a Blue Ribbon Panel.*** Congress could direct a “blue ribbon” panel or the National Academy of Sciences to study the issue and submit recommendations to Congress.

*Pro.* Congress often relies on expert panels to clarify and mediate disputes among scientists, or to identify the strengths and weaknesses of agency programs. A neutral panel could investigate claims, evaluate evidence, and develop recommendations.

*Con.* Those who believe they already understand the issue and have solutions in hand might resist a call for more study. In particular, some might argue that a study would be redundant of EPA’s *Lessons Learned*. Studies take time and resources that might be better spent on other projects. If EPA performance needs to improve, it could be argued, then remedies should be put into place immediately before EPA services are needed again.

***Develop Additional Exposure Guidelines.*** EPA has no statutory mandate or explicit authority to develop exposure guidelines for emergency situations. Consequently, few such health guidelines exist for short- or medium-term exposures to acutely toxic chemicals.<sup>274</sup> Congress might direct or encourage EPA to develop exposure guidelines for various hazardous substances and periods of exposure, or direct EPA to rely upon such guidelines when responding to hazardous substance releases where the President has declared an emergency or major disaster.

*Pro.* Advocates of this option might contend that health-based exposure guidelines could facilitate EPA decisions about the safety of measured levels of hazardous substances in the environment and expedite release of health risk information to the public. Such guidelines also might be useful to the President in

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<sup>274</sup>For level of concern (LOC) information, refer to the Web site of the Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration, at: [<http://response.restoration.noaa.gov/comeo/locs/LOCpage.html>], visited June 11, 2002.



determining whether any future site of terrorist activity qualifies for assistance under the Stafford Act.

Despite a lack of explicit statutory authority, EPA has been developing acute exposure guidelines since 1995. The Bush Administration appears committed to continuing development of acute exposure guidelines and has proposed increased funding to expedite the activity.

Proponents of this option might also argue that the United States should have a consistent and authoritative basis for evaluating health risks at disaster sites, and for ensuring consistent risk management decisions and communications in future emergency response actions. In the absence of guidelines for acute exposures to specific contaminants, occupational safety standards or the responders' best judgments are used to select LOCs in many emergency situations. If safety standards for exposure to toxic chemicals following accidents or terrorist acts were authorized by statute or regulation, the meaning and basis of EPA health statements might be better understood and accepted by independent observers.

*Con.* Opponents of this option might argue that guidelines would do little to reduce risks and would cost more than any benefits they might provide. The probability that the specific chemicals selected for guideline development would be released by terrorists might be too small to warrant an expedited development effort. They may instead advocate perhaps a more generic approach to safety that would provide protection against an array of toxicants. Moreover, if information needed to develop guidelines—about lethal and disabling concentrations of chemicals—were to become public, it might point terrorists to the most effective targets (e.g., chemical plants) or chemical weapons for mass destruction. Fear of this possibility recently prompted a decision by a federal advisory committee not to post such information on the Internet.<sup>275</sup>

**Clarify Agencies' Authorities.** Congress might want to examine and, if necessary, clarify agencies' authorities for environmental data collection, interpretation, hazard assessment, and communication, especially with respect to EPA's leadership role when FEMA gives the agency a mission assignment under Stafford Act authority.

For example, P.L. 107-188, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, directs the secretary of the Department of Health and Human Services (DHHS) to establish an advisory committee on emergency public information and communications to report on appropriate ways to communicate public health information regarding bioterrorism and other public health emergencies to the public. In addition, the secretary is directed to develop a strategy and a means for effectively communicating such information to ensure appropriate information is disseminated to the public.

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<sup>275</sup>Pat Phibbs, "Short-term Emergency Exposure Levels Will Not be Posted on Web, Official Says," *Daily Environment Report*, Apr. 12, 2002. p. A-8.

S. 1621, reported by the Committee on Environment and Public Works (S. Rept. 107-114), would amend Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to collect and analyze environmental exposure data; develop and disseminate educational materials to community members, volunteers, and workers; and provide the public access to current information on continuing releases of a harmful substance in an area that the President has declared a disaster. The legislation defines “harmful substance” as one that the President determines may be harmful to human health.

*Pro.* Clear roles for the various federal, state, and local responders, and established lines of command and communication, are essential to reduce misunderstandings and facilitate prompt, effective action in any emergency. In the event of a terrorist attack employing a weapon of mass destruction, conflicting hazard assessments, health risk statements, or advice about appropriate protective measures could exacerbate tensions and result in unnecessary injuries and loss of life. It would be preferable to resolve any problems with coordination and cooperation among agencies well before disaster strikes again, so that responders have time to learn and practice the new procedures. Legislation, therefore, might be useful to facilitate emergency operations.

For example, Congress might authorize EPA or another agency to oversee and coordinate environmental monitoring and analysis in the aftermath of an emergency. Such authority could increase the comparability of data and reduce delays in interpreting and communicating those data to the community during an emergency or major disaster. If all data were collected and analyzed in a similar way, they could be more readily combined and interpreted. Currently, EPA is the agency primarily responsible for collecting environmental information when ESF#10 is activated.<sup>276</sup> However, the FRP directs HHS to assist EPA by providing “assistance on all matters related to the assessment of health hazards at a response and protection of both response workers and the public health.”<sup>277</sup>

President Bush has suggested that the new Department of Homeland Security would centralize communication about health and safety issues, as follows:

Under the President’s proposal, a single government Department would communicate with the American people about a chemical or biological attack. The new Department would also be the organization that coordinates provision of specific threat information to local law enforcement and sets the national threat level. The new Department would ensure that local law enforcement entities—and the public—receive clear and concise information from their national government. Citizens would also have one Department telling them what actions—if any— they must take for their safety and security.<sup>278</sup>

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<sup>276</sup>Environmental information includes data on pollutants, contaminants, or hazardous substances in the air, water, or soil.

<sup>277</sup>See the Emergency Support Function #10 Hazardous Materials Annex to the Federal Response Plan at: [<http://www.fema.gov/r-n-r/frp/frpesf10.htm>], visited June 11, 2002.

<sup>278</sup>*The Department of Homeland Security*, p. 5.

Proponents of this option might argue that because it may not be possible, or useful, to equip EPA, another federal agency, or every state and locality with sufficient equipment and personnel to respond to the full range of environmental hazards that might result from terrorism, there often will be a need for federal agencies to rely in part on data collected, analyzed, and interpreted by contractors, as well as state, local, and private laboratories. It might be argued that problems such as those experienced at the WTC site might be alleviated if the EPA (or another agency) had additional authority and resources to encourage use of standard procedures for sampling and analysis across jurisdictions and among contract laboratories. If procedures were standardized, all available data could be combined more readily and quickly evaluated in terms of public health and environmental risks. Statements issued by various entities then might be more consistent because they would be based on a single data set. In addition, the use of available resources could be maximized if data collection were coordinated to eliminate unproductive duplication of effort. Finally, centralization of data collection might facilitate clearance for public release by White House officials without sacrificing national security concerns.

*Con.* On the other hand, some may contend that EPA has sufficient authority to assess environmental hazards and communicate that information to emergency responders and the community. Its role relative to the roles of other agencies is described in the FRP and clarified in executive orders and presidential directives. Thus, additional legislation might be redundant.

Others might contend that if data collection, analysis, and release were overseen by EPA or any other single federal entity, the public might never be told if other agencies found elevated levels of hazardous substances in isolated samples of air and dust. Arguably, coordination of data could lead to data control and prevent independent oversight of scientific methods and health standards. It also may be argued that the federal government's role in emergencies is to assist states and communities, not to oversee or direct them.

**Codify Selected FRP and NCP Procedures.** Congress might consider enacting legislation that would codify some procedures and roles that currently are embodied in the plans and in regulations. EPA noted that some administrative procedures require improvements. For example, EPA noted that no Joint Information Center (JIC) had been established at the WTC site.<sup>279</sup> The absence of a JIC may account for some of the concerns about inconsistent health risk messages.

*Pro.* Congress could more easily evaluate and hold agencies accountable for performance of administrative duties if legislation clearly mandates specified actions to be taken.

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<sup>279</sup>*Lessons Learned*, p. 2-7. The *Federal Response Plan* Proscribes staff assigned to ESF Function #5 (Information and Planning) from releasing "information directly to the public. It will provide information to the Joint Information Center (JIC) for release to the public and the media." *Federal Response Plan*, p. ESF #5-3.

*Con.* Opponents may contend that legislation codifying procedures might take away some of the flexibility that agencies need to respond to a wide range of emergencies.

## Indoor Air Testing and Cleaning<sup>280</sup>

**Issue Summary.** Many concerns about environmental quality in the aftermath of the terrorist attack on the WTC focus on conditions inside residences, schools, and businesses. Occupants of these buildings seek information on whether indoor environments are dangerously contaminated; if so, they may likely seek cleaning assistance. Citizens generally look to the federal government, especially EPA, for such assistance. EPA, however, at first declined to monitor indoor air, explaining that it had no clear authority to do so.<sup>281</sup> Although EPA later announced a plan to test and possibly clean as many as 15,000 residences,<sup>282</sup> this came eight months after September 11 and only after congressional and New York City council hearings, numerous media reports on the issue, and demands from New York City officials.<sup>283</sup>

While it is true that *in most circumstances* EPA has no explicit authority to test indoor air or accumulated dust or to clean private residences, EPA is authorized to address the release of hazardous substances to the environment as a result of the collapse of the WTC towers under CERCLA<sup>284</sup> and the Stafford Act.<sup>285</sup> Congress might elect to address the question of whether EPA authorities are adequate with respect to indoor air quality in the event that hazardous substances, pollutants, or contaminants are released in future terrorist attacks.

**Issue Analysis.** No federal statutes clearly authorize EPA to regulate (that is, to set limits on) any pollutant in indoor air in buildings not owned by the federal government.<sup>286</sup> State and local governments traditionally regulate indoor air quality (e.g., through building codes), often relying on national standards established by professional groups such as the American Society of Heating, Refrigerating, and Air

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<sup>280</sup>Written by Linda-Jo Schierow, Resources, Science, and Industry Division.

<sup>281</sup>John Herzfeld, "Senators Question EPA Handling of Health Risks from Trade Center Site," *Daily Environment Report*, Feb. 12, 2002, p. A-1; Christine Todd Whitman, Letter to the Honorable Jerrold Nadler, Feb. 22, 2002.

<sup>282</sup>John Herzfeld, "EPA to Provide Cleanup, Testing to Address Fears About Dust From World Trade Center," *Daily Environment Report*, May 10, 2002, p. A-1.

<sup>283</sup>Margaret Ramirez, "Officials Prod EPA; Urge Cleanup of Apartments Near WTC," *Newsday*, Mar. 9, 2002, p. A4.

<sup>284</sup>42 U.S. C. 9601-9675.

<sup>285</sup>42 U.S.C. 5121 et seq.

<sup>286</sup> However, five statutes provide EPA limited authority to conduct research and provide educational outreach and technical assistance to states, localities, and environmental professionals: the Radon Gas and Indoor Air Quality Research Act (Title IV of the Superfund Amendments and Reauthorization Act (SARA) of 1986,); the Toxic Substances Control Act, Section 6, as well as Titles II (asbestos), III (radon), and IV (lead-based paint); the Federal Insecticide, Fungicide and Rodenticide Act, the Clean Air Act, and the Safe Drinking Water Act. SARA directs EPA to coordinate indoor air quality activities conducted by the federal government through an interagency Committee on Indoor Air Quality.

Conditioning Engineers (ASHRAE). The Occupational Safety and Health Administration (OSHA) generally regulates indoor air pollutants in the workplace.

***Application to Terrorist Attacks.*** In the first weeks following September 11, 2001, EPA vacuumed streets and rooftops, set up stationary monitors in numerous locations, and attempted to ensure the safety of first responders working at Ground Zero.

EPA monitoring generally was limited to the ambient (outdoor) environment, while indoor environments were tested by the city of New York, because, according to EPA Administrator Christine Todd Whitman, EPA served “in a supporting role to the City of New York and the State of New York, consistent with the *Federal Response Plan* and mission assignments from FEMA.”<sup>287</sup> The EPA administrator stated that :

... under the Federal Response Plan local governments have primary responsibility for responding to an event. Those governments, however, can turn to the federal government for assistance where they need it. In this event, the City of New York asked, through FEMA, that EPA assume lead responsibility for monitoring the outdoor conditions at and around the site of the event and for decontaminating the streets and other outdoor public areas. ... the City assumed responsibility for indoor testing and the reoccupancy of buildings.<sup>288</sup>

In response to questions raised by U.S. Representative Jerrold Nadler about this division of responsibility,<sup>289</sup> Whitman replied:

I believe that Congress and the Administration need to revisit the issue of authority and responsibility for indoor environmental conditions in the wake of a terrorist attack. While the current practice is to vest responsibility in local and state governments for indoor air conditions, perhaps this approach is not appropriate in the wake of an event like September 11<sup>th</sup>.<sup>290</sup>

The Senate Subcommittee on Clean Air, Wetlands, and Climate Change, of the Committee on Environment and Public Works, held a field hearing in New York City February 11, 2002, to examine Representative Nadler’s concerns about continuing air quality problems at the WTC site. Shortly after the hearing, Whitman formed an indoor air task force. The New York City council held a hearing March 8, 2002, to consider the environmental response to the terrorist attacks. The same day, New York City Mayor Michael Bloomberg and U.S. Senator Hillary Rodham Clinton announced formation of a downtown air quality task force.

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<sup>287</sup>Whitman letter.

<sup>288</sup>Ibid.

<sup>289</sup>Representative Jerrold Nadler, “White paper: Lower Manhattan Air Quality, Version 1,” Mar. 8, 2002; Representative Jerrold Nadler, “Letter to Tom Ridge, Office of Homeland Security,” Mar. 25, 2002.

<sup>290</sup>Whitman letter.

On May 8, 2002, EPA announced that it, state and city agencies, FEMA, and the Occupational Safety and Health Administration would collaborate to provide residents of Lower Manhattan free cleaning and testing of their apartments, on request.<sup>291</sup> EPA would test air and dust in apartments for asbestos, and FEMA would provide funding through New York City for residents who want their apartments professionally cleaned by certified contractors. EPA would conduct followup testing of cleaned apartments.

EPA claims that its position regarding its authority is unchanged, and maintains that "... the scientific data about any immediate health risks from indoor air is reassuring." Nevertheless, EPA has agreed to test homes for asbestos because "people should not have to live with uncertainty about their futures," according to Jane Kenny, Region II EPA administrator.<sup>292</sup>

**Background.** As noted in the previous section of this report on "Environmental Hazard Assessment and Communication" (refer to page 76 et seq.), CERCLA provides EPA with broad authority to respond to releases of hazardous substances, pollutants, or contaminants.<sup>293</sup> With respect to cleaning a site contaminated by hazardous substances, CERCLA requires prior consultation with states.

The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.<sup>294</sup>

The Stafford Act provides additional authority to respond to releases of hazardous materials. Assistance is authorized specifically for "the performance of essential community services, provision of health and safety measures, and management, control, and reduction of immediate threats to public health and safety."<sup>295</sup> (Refer to discussion of the Stafford Act, the FRP, and CONPLAN authorities beginning on page 78.) The Stafford Act also authorizes federal agencies to perform on public or private lands or waters –

... any work or services essential to saving lives and protecting and preserving property or public health and safety, including – (A) debris removal ... (E) demolition of unsafe structures which endanger the public; (F) warning of further risks and hazards; (G) dissemination of public information and assistance

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<sup>291</sup>John Herzfeld, "EPA to Provide Cleanup, Testing to Address Fears About Dust From World Trade Center," *Daily Environment Report*, May 10, 2002. p. A-4; "EPA Response to September 11" at: [<http://www.epa.gov/wtc/>], visited May 24, 2002.

<sup>292</sup>Ibid.

<sup>293</sup>Asbestos is a "hazardous substance" as defined by CERCLA.

<sup>294</sup>CERCLA §104(c)(2).

<sup>295</sup>42 USC 5192(a).

regarding health and safety measures ... (I) reduction of immediate threats to life, property, and public health and safety.<sup>296</sup>

This authority is clarified in the FRP with respect to a release of hazardous substances.

Appropriate response actions under the NCP include efforts to detect, identify, contain, clean up, or dispose of released hazardous materials. The actions can include stabilization of berms, dikes, or impoundments; capping of contaminated soils or sludge; use of chemicals and other materials to contain or retard the spread of the release or to mitigate its effects; drainage controls; fences, warning signs, or other security or site control precautions; removal of highly contaminated soils from drainage areas; removal of drums, barrels, tanks, or other bulk containers that contain hazardous substances; and other measures as deemed necessary.<sup>297</sup>

**Policy Options.** If EPA's statutory authority is considered inadequate to address indoor air hazards, the agency might be unprepared to perform the duties delineated by PDD 62 in the event of future attacks. Congress might wish to consider several policy options with regard to environmental monitoring and cleaning of indoor environments.

**Maintain the Status Quo.** Congress might find that current statutory policies are adequate and that EPA sufficiently implemented governing authorities in a supporting role to New York City and state.

**Pro.** The existing authorities are necessarily discretionary, allowing EPA to confer with other federal, state, and local government officials and determine, based on competing needs for available resources, how the agency might be of greatest assistance under the circumstances. For example, given the demands on EPA resources, especially in the immediate aftermath of the WTC tragedy, additional monitoring of indoor environments and cleaning might have been less important to protecting public health than attending to the outdoor environment, which was thick with dust. Moreover, the city of New York probably has the necessary experience and expertise to regulate asbestos contamination and removal. New York's Department of Environmental Protection routinely oversees asbestos removal projects under city regulations and operates an environmental laboratory that analyzes asbestos, air pollutants, and hazardous material samples. On the other hand, EPA expertise and assistance might be more crucial if the hazardous substance released were a chemical, radiological, or biological weapon.

**Con.** Others may contend that the confusion shown after September 11, along with the difficulties encountered in having air tested and buildings cleaned, indicate that policy changes are required.

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<sup>296</sup>42 USC 5170b(a)(3).

<sup>297</sup>The FRP Annex for ESF#10 may be accessed from the FEMA Response and Recovery website, at: [<http://www.fema.gov/r-n-r/frp/frpesf10.htm>], visited June 13, 2002.



**Clarify EPA Authority.** Congress might choose to amend CERCLA or the Stafford Act to clarify EPA authority with respect to indoor environmental contamination. An amended law could either clearly grant EPA authority to test and clean private buildings or clearly prohibit such actions.

*Pro.* Clarification could eliminate any questions EPA officials might have about their authority. If authority were made explicit, it could expedite future EPA efforts to protect building occupants affected by terrorist acts. This could lower risks to public health due to exposure to hazardous substances.

*Con.* The cost of testing and cleaning private buildings might be considerable. Clarification of this authority could increase federal disaster response expenditures.

**Reduce EPA Discretion.** Congress might elect to mandate EPA activity to monitor or clean up private buildings (or oversee those activities), either in New York City specifically, or in all future emergency and disaster declarations where hazardous substances are released. When EPA initially chose not to monitor or clean indoor environments in the vicinity of the WTC, it was exercising discretion provided by CERCLA.

*Pro.* Congress could choose to reduce EPA discretion to ensure protection of building occupants in future emergencies. This could be accomplished by amending CERCLA or the Stafford Act.

*Con.* A congressional mandate would reduce EPA's ability to tailor responses to particular circumstances, and reduced flexibility might have negative impacts. For example, it could force actions that are not economically efficient, not reasonable or practical, or not compatible with the public interest. Consequently, the cost of a universal cleanup mandate might be high, especially if there are recurring terrorist incidents. Finally, it might be argued that states and localities should not be forced to allow EPA to operate in neighborhoods and homes when non-federal government agencies are responding.

## Measures of Need for Temporary Housing<sup>298</sup>

**Issue Summary.** A terrorist attack could involve the release of a chemical, biological, radioactive, or nuclear (CBRN) weapon. Moreover, as shown in the September 11 tragedy, a terrorist attack with more conventional explosives or material can release such hazardous airborne substances as asbestos, residue from burning fuel, and clouds of dust. Depending on variable conditions such as wind flow and speed, precipitation, temperature, and the presence of air-handling equipment, residual airborne CBRN substances or other hazardous material could infiltrate residences in areas surrounding an attack zone.

If a terrorist attack leads to a major disaster or emergency declaration under the Stafford Act, the occupants of residences in the political jurisdictions named in the declaration might be eligible for temporary housing assistance. However, if airborne particles are carried to residences outside the disaster area, their occupants would not be eligible. Congress might consider legislation that addresses whether residents of areas outside the disaster area, but nonetheless affected by substances released by an attack, should be eligible for temporary housing assistance.<sup>299</sup>

**Issue Analysis.** CBRN substances or toxic contaminants released in a terrorist attack or other emergency situation can pose a threat to public health at the time of the event and for long period afterward. People residing in areas with biological, chemical, or physical residues would continue to face health consequences until airborne particles and residual risks could be eliminated or reduced to acceptable levels.

**Application to Terrorist Attacks.** The destruction of buildings in the September 11 WTC and Pentagon attacks released tons of very fine (as small as 0.09 micrometers<sup>300</sup>) and caustic particles (up to pH 11.8<sup>301</sup>) composed of varying mixtures of chemicals, heavy metals, and other substances. Around the WTC site reports surfaced of nearby residences containing residual risks for weeks after the attacks, mostly in the form of particulates containing asbestos and other health-threatening

<sup>298</sup>Written by Michael Simpson, Resources, Science, and Industry Division and Keith Bea, Government and Finance Division.

<sup>299</sup>This issue discussion pertains to residences, not other buildings and facilities. Comparable policy options might be considered for commercial, governmental, and non-profit facilities affected by airborne particles.

<sup>300</sup>Federal air quality standards exist for outdoor air particles only down to 2.5 micrometers. The size of airborne particulates is particularly relevant to congressional debate because of at least three concerns. First, the health risk is significant because smaller particulates stay airborne longer and are deposited deeper into lungs. Second, federal authority over non-occupational indoor air hazards is less established than for outdoor air. Third, the capability of laboratories to analyze the hazards of smaller particles may be at issue. For example, the need to analyze samples in New York City after September 11 exceeded the capabilities of laboratories. See: U.S. Environmental Protection Agency, *Lessons Learned in the Aftermath of September 11<sup>th</sup>, 2001, Final Report* (Washington: February 2002), pp. 3-8 and 3-9.

<sup>301</sup>Pure water is neutral at pH7 on the pH scale of 0 to 14; alkaline liquid drain cleaner can have a pH of 12, while acidic lemon juice can have a pH of 2.2

substances.<sup>302</sup> Continued exposure to these residues posed public health risks. Future terrorist attacks may result in explosions of oil refineries, chemical plants, or the destruction of other structures that could result in similar or even more serious contamination of residences.

**Background.** Federal assistance for individuals and families dislocated from their residences as a result of a catastrophe has been provided for over 30 years. In the course of considering and enacting four significant disaster-related public laws, Congress has established a trend of increasing federal responsibility for and commitment to temporary housing assistance for victims of declared disasters. Congress has not, however, specifically authorized assistance for housing assistance due to airborne particles.

In 1966, Congress amended the National Housing Act to provide that families displaced as a result of a major disaster would be eligible for mortgage insurance.<sup>303</sup> Three years later Congress expanded this assistance by authorizing the President “to provide on a temporary basis, as prescribed in this section, dwelling accommodations for individuals and families displaced by a major disaster.”<sup>304</sup> The temporary assistance authorized in 1969 included unoccupied housing owned by the federal government, unoccupied public housing units owned by local public housing agencies, funding to lease existing residences, or the acquisition of mobile homes. Note that in addition to such temporary housing assistance, Congress authorized agencies to provide assistance to disaster victims in the 1960s under the Small Business Act<sup>305</sup> and the Consolidated Farmers Home Administration Act<sup>306</sup> through loans for the costs of home repair and reconstruction. Also, under CERCLA Congress has authorized assistance for removal “actions as may be necessary ... in the event of the threat of release of hazardous substances into the environment....”<sup>307</sup>

Further expansion of the temporary housing assistance provisions occurred in the 1970s. The Disaster Relief Act of 1970, enacted after Hurricane Camille destroyed many homes in states from Mississippi to Virginia, authorized the provision of rent-free housing for 12 months of occupancy as well as mortgage or rental payments for those who faced eviction from their residences due to nonpayment as a result of the disaster.<sup>308</sup> In addition, the 1970 statute authorized the administrator of the Veterans’ Administration to “extend on an individual case basis such forbearance or indulgence” to owners of residential property “as the

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<sup>302</sup>Thomas Cahill, professor emeritus at the University of California-Davis and the DELTA Group study, available at [<http://delta.ucdavis.edu>], visited June 10, 2002.

<sup>303</sup>Disaster Relief Act of 1966, P.L. 89-769, 80 Stat. 1317.

<sup>304</sup>P.L. 91-79, 83 Stat. 128-129.

<sup>305</sup>Small Business Act Amendments of 1958, P.L. 85-536, 72 Stat. 389.

<sup>306</sup>Agricultural Act of 1961, P.L. 87-128, 75 Stat. 311.

<sup>307</sup>42 U.S.C. 9601(23).

<sup>308</sup>The Disaster Relief Act of 1970, P.L. 91-606, 84 Stat. 1751-1752.

Administrator determines to be warranted by the facts of the case and the circumstances of such owner.”<sup>309</sup>

Congress authorized other assistance with enactment of the Disaster Relief Act of 1974 that authorized the President to provide a new form of assistance—grants for repairs, as follows:

the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition with minimal repairs. No assistance provided under this section may be used for major reconstruction or rehabilitation of damaged property.<sup>310</sup>

The 1988 amendments expanded upon the temporary housing assistance provisions. The period in which federal mortgage assistance and rental payments were authorized to be provided was extended to 18 from 12 months, with the President authorized to provide the assistance past 18 months if deemed necessary.<sup>311</sup> Most recently, Congress amended the temporary housing authority by limiting each repair grant to \$5,000 and authorizing the President to provide financial assistance for the replacement of damaged residences, with a limit of \$10,000. The 2000 amendments also deleted authority for the mortgage and rental assistance program for major disasters declared after May 1, 2002.<sup>312</sup>

**Policy Options.** Reports of the presence of airborne hazardous particles in residences and the inability of residents to occupy their apartments, condominiums, or homes in New York City after the attack might lead Congress to re-evaluate the temporary housing assistance provisions. Some options that could be considered by Congress are discussed below.

***Maintain the Status Quo.*** One policy option is to retain the Stafford Act provisions that authorize temporary housing facilities, payment assistance, and limited repair grants to victims of major disasters.

***Pro.*** A terrorist attack might be launched many ways (e.g., release of one or several biological agents, chemicals, or radioactive substances), along with the myriad types and mixtures of residues, and can result in a wide variety of possible residual risks. Determining levels of risk acceptable to different subpopulations following a terrorism situation may be difficult to legislate. Holders of this view may argue that the existing Stafford Act provisions provide adequate help to those temporarily unable to occupy their residences.

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<sup>309</sup>Ibid., 84 Stat. 1753.

<sup>310</sup>The Disaster Relief Act of 1974, P.L. 93-288, 88 Stat. 155.

<sup>311</sup>The Disaster Relief and Emergency Assistance Amendments of 1988, P.L. 100-707, 102 Stat. 4702.

<sup>312</sup>The Disaster Mitigation Act of 2000, P.L. 106-390, 114 Stat. 1567-1569.

*Con.* Others might believe that, especially in a time of crisis, it would be preferable to have explicit statutory language to provide for temporary housing assistance when residual risks associated with airborne particles are unacceptable. They may seek establishment of a standard of reasonableness that reflects analytical capability and limitations in the wake of an attack.

***Establish Health Risk as a Measure of Need.*** The Stafford Act might be amended to authorize the President to provide temporary housing to persons who, as a result of a major disaster, are unable to occupy their homes due to the presence of residual risks that meet specified thresholds.

*Pro.* Proponents of change may argue that, especially in a time of crisis, it would be preferable to have explicit statutory language to provide for temporary housing when residual risks are deemed unacceptable, using a standard of reasonableness that reflects available information and measurement standards.

*Con.* Opponents of such legislation might argue that it is difficult or impossible to determine a level of residual risk that would trigger the need to provide temporary housing after an attack given the multitude of variables. As a result, that difficulty might lead to inconsistent administrative decisions regarding the conditions under which such housing aid would be provided.

## Small Business Assistance<sup>313</sup>

**Issue Summary.** The September 11 terrorist attacks dislocated, disrupted or destroyed nearly 18,000 businesses—the vast majority being small businesses—in and around New York City’s World Trade Center (WTC) complex.<sup>314</sup> Economic disruption quickly spread to countless firms across the United States. In the aftermath of the attacks, SBA is helping small firms by means of an assortment of long-standing loan and managerial assistance programs.<sup>315</sup>

Analysis of the SBA’s response to the attacks, as well as speculation about its ability to respond to possible future disasters of a far greater magnitude, raise the larger question of what the federal role should be in assisting small businesses recover from a worst-case scenario. Should the economic development role of the federal government be limited, as has been suggested, to rebuilding infrastructure, or should it be interpreted far more broadly? In a largely free-market economy, would a large-scale federal role in assisting small businesses be necessary for the economic revival of a city or area that had suffered devastation from weapons of mass destruction?

**Issue Analysis.** Reports indicate that, to some degree, SBA is demonstrating flexibility in responding to the September 11 attacks. The agency has exercised its administrative authority to expand eligibility for Economic Injury Disaster Loans (EIDL) to small businesses nationwide, not just in declared disaster areas.<sup>316</sup> Nevertheless, despite the agency’s half century of disaster assistance experience, the nature and magnitude of the consequences of possible future terrorist attacks—including those involving weapons of mass destruction (WMD)—raise questions about the sufficiency of the SBA’s role and authority. In addition, scenarios of devastating attacks lead to the broader question of what would constitute an appropriate federal response. Congress may wish to review the agency’s mission in responding to possible future terrorist attacks and the federal role in economic development after disasters in general, particularly with regard to financial assistance for small businesses.

**Application to Terrorist Attacks.** Following the terrorist attacks on the World Trade Center, SBA dispatched employees from its headquarters and regional offices to augment its staff in New York City. Experienced SBA loan officers were

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<sup>313</sup>Written by Bruce K. Mulock, Government and Finance Division.

<sup>314</sup>“World Trade Center Disaster: Final Action Plan for New York Business Recovery and Economic Revitalization.” Empire State Development in cooperation with New York City Economic Development Corporation. January 30, 2002, p. 2. (Hereafter cited as the New York State Action Plan), at: [<http://www.empire.state.ny.us/wtc/grant/ActionPlan/actionplan.pdf>], visited May 1, 2002.

<sup>315</sup>Basic authority for SBA disaster loans is found at 15 U.S.C. 636.

<sup>316</sup> A fact sheet on SBA’s expanded EIDL program is available at: [<http://www.sba.gov/news/current01/economicinjuryfactsheet.html>], visited May 23, 2002.

made available in disaster recovery centers located throughout the disaster area to assist business owners and individuals.<sup>317</sup>

SBA offers both physical disaster loans to repair or replace disaster-damaged property and economic injury disaster loans (EIDL) to cover operating expenses businesses could have afforded to pay if the disaster had not occurred. Despite the name of the agency, its physical disaster assistance is not limited to small firms; SBA makes such loans to businesses of all sizes, nonprofit organizations, homeowners, and renters.

SBA, by some accounts, has been able to respond rapidly and adequately to the September 11 attacks, guaranteeing several hundreds of millions of dollars worth of loans to affected businesses.<sup>318</sup> Still, some observers believe the agency's response has been insufficient to the task. Moreover, while the physical and economic injury suffered by small businesses associated with the attacks on the WTC complex (as well as the Pentagon) could hardly be considered insubstantial, it is possible that future terrorist attacks could produce equal or greater damage and destruction. In such a case, SBA resources could prove inadequate.

As of May 22, 2002, SBA had approved 4,591 loans in connection with the attacks on the World Trade Center, for a total of \$371 million (average size loan: approximately \$80,800). In Virginia, SBA had approved 96 loans, including those for businesses at Reagan Washington National Airport, for \$13.8 million in connection with the attack on the Pentagon (average size loan: approximately \$143,600).<sup>319</sup>

The federal government has also provided financial assistance to small businesses in and around the WTC in the form of Community Development Block Grant (CDBG) funds. As part of the \$40 billion emergency appropriation (P.L. 107-38) passed by Congress and signed by the President in September 2001, \$700 million in special CDBG funds were provided to the state of New York for use by the Lower Manhattan Development Corporation. On January 10, 2002, the President signed the FY2002 Defense Appropriations bill, which included an additional \$2 billion in

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<sup>317</sup>Testimony of Hector Barreto, Administrator of the U.S. Small Business Administration, before the House Small Business Committee, December 4, 2001, [<http://www.house.gov/smbiz/hearings/107th/2001/011206b/barreto.html>], visited June 11, 2002.

<sup>318</sup> For example, see: Bill Egbert, "Biz Folk Cope," *New York Daily News*, Apr. 4, 2002, p. 1. Also, Karen Robinson-Jacobs, "Rejections of Emergency SBA Loans Irk Companies," *Los Angeles Times*, Dec. 24, 2001.

<sup>319</sup> By way of comparison, in response to California's Northridge earthquake in 1994, SBA made 51,688 loans to homeowners and renters totaling \$1.167 billion, and 13,328 loans to businesses totaling \$6.545 billion. And, specifically in terms of loans made in response to terrorism, SBA made 172 loans for \$10.4 million for the Oklahoma City bombing, and nine loans for \$512,400 for the World Trade Center bombing in 1993. The latter are the only loans made by the agency in response to terrorism prior to the September 11 attacks.

special CDBG funds<sup>320</sup> for New York City's economic recovery (part of roughly \$20 billion appropriated pursuant to the attacks on the WTC).<sup>321</sup>

**Background.** The importance of small businesses to the viability of an area's economic recovery following a disaster—including possible future terrorist attacks with potentially catastrophic consequences—is generally acknowledged. Small businesses account for 97% of the nation's firms, employ about half of all workers, and by any standard are an integral part of the nation's economy.

While self-insurance and various types of insurance coverage can play a significant role for large firms in the event of terrorist attacks, few small businesses have any disaster insurance coverage. Moreover, it is anticipated that cost and availability problems will preclude the vast majority of small firms from obtaining any meaningful insurance protection against future acts of terrorism.<sup>322</sup>

Insurance aside, Congress has long recognized the primacy of local and state responsibility for disaster recovery assistance to businesses; the federal role has consistently been viewed as supplemental.<sup>323</sup> The potential magnitude of possible future attacks, however, raises questions about the possibility of the federal government assuming a far greater role. Presently, SBA is generally regarded as the federal agency primarily responsible for helping small businesses recover from the physical damage and economic injury associated with terrorist attacks.

Although researchers are paying increased attention to the long-term effects of disasters and the factors that affect the ability of a community to recover, there has been little systematic research on recovery processes and outcomes. In particular, "the processes and outcomes associated with the recovery of private businesses have almost never been addressed in the disaster recovery literature."<sup>324</sup> Despite the

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<sup>320</sup>CDBG funds are generally used to help build low-income housing. P.L. 107-38 allowed HUD to waive certain requirements, or promulgate alternative requirements. U.S. Dept. of Housing and Urban Development, "Statutory and Regulatory Waivers Granted to New York State for Recovery from the September 11, 2001 Terrorists Attacks," *Federal Register*, vol. 67, no. 18, Jan. 28, 2002, p. 4164.

<sup>321</sup> Details on how the \$2.7 billion in total CDBG funds are being allocated, including funding for small businesses, is available in a letter to New York city council member Helen Sears from the City of New York, Independent Budget Office, [<http://www.ibo.nyc.ny.us/iboreports/CDBGLetter.pdf>], visited May 1, 2002.

<sup>322</sup> For more on the issue of insurance, see CRS Report RS21075, *Terrorism Insurance in the Post September 11 Marketplace*, by S. Roy Woodall Jr.

<sup>323</sup> U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, *Federal Cost of Disaster Assistance*, hearings, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 26, 1998 (Washington: GPO, 1998), p. 86. Prepared statement of Judy A. England-Joseph, Director, Housing and Community Development Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office.

<sup>324</sup> James M. Dahlhamer and Kathleen J. Tierney, "Winners and Losers: Predicting Business Disaster Recovery Outcomes Following the Northridge Earthquake," at: [<http://www.udel.edu/DRC/preliminary/243.pdf>], visited April 29, 2002.



paucity of research and analysis concerning the effects of disasters on small businesses, several key findings emerge:<sup>325</sup>

- Compared to large firms, small ones seem to be particularly vulnerable to disaster impacts and losses. Small businesses tend to have inadequate cash reserves, are less able to raise capital, and generally are unprepared to cope with disasters and their effects.
- Small firms forced to temporarily close typically face immediate cash flow problems and, thus, need to resume operations quickly in order to remain viable. The longer it takes business enterprises to recover, the larger the impact on the revenue-generating power of local governments because local jurisdictions depend on sales and property taxes. Prolonged business disruptions have the potential for jeopardizing community-financed services such as public works and economic development initiatives.

**Policy Options.** Congress may choose to evaluate whether SBA has the statutory authority and organizational structure and capacity to respond adequately to future attacks. Congress might consider a range of policy options that addresses the unique disaster recovery needs of small businesses, including the following:

**Maintain the Status Quo.** SBA presently has a variety of loan and technical assistance programs to assist small businesses recover from disasters of all kinds. Decades of experience gained after many types of disasters—including terrorist attacks—indicate that the existing authority has served the nation.

*Pro.* Many observers believe that, in the aftermath of the terrorist attacks, the agency has demonstrated flexibility by making program changes administratively to deal with the current situation. SBA's response to the recent attacks has been augmented by the use of CDBG funds appropriated for special purposes.

*Con.* Some have criticized the adequacy of SBA's response. The number of businesses applying for SBA loans pursuant to the Stafford Act may be perceived to be low. Representatives of small business say the dearth of applications is attributable to their unwillingness to take on additional debt, because the loan process is difficult, and because some business owners are being asked to use their homes as collateral. Furthermore, many firms report that although they have been approved for SBA loans, they have not received money in a timely fashion.<sup>326</sup>

**Relocation Proscriptions.** Congress might prohibit the use of federal funds to entice businesses affected by disasters or terrorist attacks to abandon their current

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<sup>325</sup> Ibid.

<sup>326</sup> "Federal Aid to New York City in the Wake of the September 11<sup>th</sup> Attacks: What is needed and how should it be structured and targeted?" New York City Council, Report of the Legal and Governmental Affairs Division. February 11, 2002.

location for the jurisdiction offering the subsidy.<sup>327</sup> The federal government might also consider providing relocation and other assistance to displaced businesses that relocate within the affected jurisdiction and commit their insurance settlements and other resources to the rebuilding of the affected area.<sup>328</sup>

*Pro.* News reports hint that neighboring jurisdictions to Manhattan have attempted to influence relocation decisions of firms in the vicinity of the WTC by offering subsidies and incentives.<sup>329</sup> While some forms of competition among states and local jurisdictions for businesses through general tax and spending policies is beneficial, not all competition increases economic efficiency. Preferential treatment for specific businesses misallocates private resources and can cause state and local government to provide too few public goods.<sup>330</sup>

*Con.* There are a host of arguments against relocation proscriptions, not the least being that relocation decisions are often better guided by normal market forces than by governmental intervention.<sup>331</sup> Moreover, the possible use of weapons of mass destruction may preclude the rebuilding in affected areas.

**Placement of Federal Facilities.** President Carter in 1978 signed Executive Order 12072 to require that federal buildings be built in areas of urban blight.<sup>332</sup> Congress could consider requiring federal construction projects be built in areas devastated by terrorist attacks or that goods and services be purchased from firms in those areas in order to encourage economic development. Similarly, E.O. 12073, also promulgated by President Carter, encouraged federal executive agencies to purchase goods and services from economically disadvantaged areas as a way to stimulate economic activity for small businesses.

<sup>327</sup> Philip P. Frickey, “The Congressional Process and the Constitutionality of Federal Legislation to End the Economic War Among the States,” [[http://news.mpr.org/features/199605/01\\_wittl\\_econwar/studyguide/frickey.htm](http://news.mpr.org/features/199605/01_wittl_econwar/studyguide/frickey.htm)], visited June 7, 2002.

<sup>328</sup> “New York and the Federal Fiscal Policy in the Aftermath of September 11<sup>th</sup>: State and Local Impacts of Federal Policy Options,” p. 12. Fiscal Policy Institute, January 23, 2002, at: [<http://www.fiscalpolicy.org/FederalOptions.pdf>], visited May 2, 2002.

<sup>329</sup> *Ibid.*

<sup>330</sup> Melvin L. Burstein and Arthur J. Rolnick. “Congress Should End the Economic War Among the States,” *Federal Reserve Bank of Minneapolis*, 1994 Annual Report Essay, at: [<http://minneapolisfed.org/pubs/ar/ar1994.html>], visited June 11, 2002.

<sup>331</sup> For example, refer to: Graham S. Taft, “Doing Battle Over the Incentives War: Improve Accountability But Avoid Federal Noncompete Mandates” [[http://news.mpr.org/features/199605/01\\_wittl\\_econwar/studyguide/toft.htm](http://news.mpr.org/features/199605/01_wittl_econwar/studyguide/toft.htm)], visited June 11, 2002.

<sup>332</sup> U.S. President (Carter), “Federal Space Management,” Executive Order 12072, *Presidential Documents*, vol. 14, no. 33, Aug. 21, 1978, p. 1430. E.O. 12072 replaced a similar Executive Order signed by President Nixon on February 27, 1970 (E.O. 11512). Titled “Planning, Acquisition, and Management of Federal Office Space,” E.O. 11512 directed the General Services Administration to coordinate the location of federal facilities “in a manner designed to exert a positive economic and social influence on the development or redevelopment of the areas in which such facilities will be located....”

*Pro.* Normal disaster assistance may not be sufficient to help areas recover from future attacks, particularly if CBRN devices destroy or contaminate commercial districts. Additional economic stimulus efforts, e.g., redirecting federal construction and encouraging federal procurement, may assist affected areas to more rapidly recover their economic viability.

*Con.* With regard to the construction of federal facilities addressed in E.O. 12072, the long time required to plan and construct buildings of a business district and concerns about environmental safety may render any such initiative infeasible.

**Grants or Loans?** Private business operators, like others affected by disasters, primarily seek federal financial assistance through grants-in-aid instead of loans. SBA loans are a key component of the overall federal disaster recovery effort. They are the primary form of federal assistance for nonfarm, private sector disaster losses. SBA has not in the past, or currently, provided grants to small businesses in the aftermath of disasters. Accordingly, it would be a policy change if Congress authorized SBA to provide grants instead of loans.

*Pro.* Findings from the September 11 attacks would seem to argue for the provision of grants rather than loans to affected small businesses. Unlike large firms, small ones tend to be far less prepared to deal with the aftermath of an attack. Foremost in their comparative deficiency is their lack of capital. Most have little in the way of reserves, and quickly run out of working capital. While bridge loans have been helpful in many instances, for many small businesses they only delay default or bankruptcy. Many small businesses might require grants instead of loans in order to survive.

*Con.* SBA loans are repaid to the Treasury, thus reducing federal disaster costs compared to grants. Grants completely transfer risk coverage to society, and might or might not receive widespread support depending on the nature and severity of the disaster. Grants issued to businesses to cover disaster-related losses require a great deal of consideration related to equity and resource allocations.<sup>333</sup>

**Language Requirements.** Congress may consider issues of communications and language difficulty that were reported after the WTC attack. The SBA or another agency maintaining a central registry of interpreters to communicate effectively with disaster victims might be useful. Congress could require that agencies provide disaster assistance instructions in different languages.<sup>334</sup>

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<sup>333</sup>Testimony of Hector Barreto, administrator of the U.S. Small Business Administration, before the House Small Business Committee, December 4, 2001.

<sup>334</sup> Problems with bilingual capabilities in connection with disaster assistance in the aftermath of the September 11 attacks were the focus of testimony by Don Lee, disaster assistance coordinator for a community-based organization serving Chinese-Americans in the vicinity of the WTC. Refer to the following Internet Web site for the statement: [<http://www.house.gov/smbiz/hearings/107th/2001/011206b/lee.html>], visited June 3, 2002. Hearing by the House Small Business Committee on December 6, 2001, "90 Days After September 11<sup>th</sup>: How Are Small Businesses Being Helped?" [unpublished]

*Pro.* The process, forms, and instructions associated with disaster assistance often prove confusing for applicants fluent in English. The challenge can be formidable for victims for whom English is a second language. As underscored by the WTC tragedy, small businesses in urban areas often have immigrant owners and customers. Inordinate delays and confusion in communications between relief agencies and victims can degrade the overall recovery effort. Advocates for this option might argue that instructions on disaster loans and other assistance should be available in different languages.

*Con.* Given the uncertainties of the populations that could be affected by future attacks, the costs of establishing and maintaining a central registry are likely to outweigh the benefits. While regrettable, opponents may contend that delays in providing disaster assistance are not intolerable. Scarce federal resources, they might argue, can be applied elsewhere.

## Assistance to Education Systems<sup>335</sup>

**Issue Summary.** The terrorist attack of September 11 had broad impacts on the New York City public school system and higher education facilities. Students were displaced from schools, administrators sought counseling assistance for staff and students, bus transportation systems were disrupted, and environmental threats developed in academic buildings. Some parents who could afford to removed their children from city schools, transferring them to other systems. Less affluent families, or those who did not remove their children for other reasons, continued to face concerns about safety in a city that might bear the brunt of future attacks.

The Stafford Act authorizes federal assistance for the repair or reconstruction of public and private non-profit educational facilities damaged or destroyed by a major disaster. Reports of the range of difficulties encountered after the terrorist attack in New York City have raised concerns about FEMA's administration of the Stafford Act and the reach of the statute. Problems and perceived failures of the federal government to address certain needs of the educational systems might lead Congress to reconsider existing authorities intended to help school systems recover from disasters.

**Issue Analysis.** For decades Congress has authorized federal assistance for public education systems and, more recently, nonprofit educational facilities, to return educational services to their pre-disaster condition. The Stafford Act authorizes federal assistance for the "repair, restoration, reconstruction, or replacement of a public facility" damaged or destroyed by a major disaster or to "a private nonprofit facility" similarly affected.<sup>336</sup> The Act includes in the definition of "public facility" "any public building, structure, or system, including those used for educational, recreational, or cultural purposes"<sup>337</sup> and in the definition of "private nonprofit facility" "educational ... facilities ...which provide essential services of a governmental nature to the general public."<sup>338</sup>

**Application to Terrorist Attacks.** While a terrorist attack, like a catastrophic natural disaster, can wreck havoc on the facilities, systems, and equipment used for purposes of education, the aftereffects of the September 11 attack indicate that different risks and threats must be addressed. The trauma of students close to or involved in an attack might indelibly affect the well-being of young people, especially those who lost parents or whose families might be seen as targets of terrorists. Health hazards (such as the presence of contaminants in buildings and on books and equipment) can pose a considerable threat because students and staff spend many hours in these environments.

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<sup>335</sup>Written by Keith Bea of the Government and Finance Division with contributions from Richard N. Apling, Domestic Social Policy Division.

<sup>336</sup>42 U.S.C. 5172(a)

<sup>337</sup>42 U.S.C. 5122(8)(C)

<sup>338</sup>42 U.S.C. 5122(9)

News reports published after the September 11 attacks in New York City provide information on the impact of the attacks on the education system. Months after the attacks, some parents were reluctant or concerned about students' return to school because of threats from airborne contaminants and inadequate air filter systems in the schools, while others expressed optimism and confidence.<sup>339</sup> Of particular note, considerable controversy has surrounded funding for counseling as parents and students struggle with emotional problems that interfere with students' education.<sup>340</sup> One study undertaken by the Board of Education for New York City reportedly found "that about 75,000 of the more than 710,000 public school students in grades 4 through 12 are suffering symptoms of post-traumatic stress disorder, and as many as 190,000 have mental health problems, both related and unrelated to 9/11."<sup>341</sup>

Cleaning and environmental testing have been conducted in school buildings, and federal and non-federal officials have continued to monitor conditions in and around the schools.<sup>342</sup> School systems not directly affected by the disaster may bear additional costs as students are transferred from damaged buildings and unaffected buildings become overcrowded. In New York City, bus transportation systems have been disrupted due to the transfer of students from schools directly affected by the collapse of the buildings and the need to run buses from one school district to another.<sup>343</sup> Costs have been incurred by the city as school officials schedule sessions to make up for lost class time.

According to one estimate, the attack cost the New York City school system \$200 million.<sup>344</sup> While negotiations between New York officials and FEMA

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<sup>339</sup>Abby Goodnough, "Stuyvesant Air-Quality Dispute," *The New York Times*, Nov. 7, 2001, p. D12. Anemona Hartocollis, "Near Ground Zero, a Vote to Return to School," *The New York Times*, Jan. 30, 2002, p. B8.

<sup>340</sup>Descriptions of the impact of the terrorist attack on the New York City school system are be found in: Michelle Davis, "New York Schools, U.S. Officials at Odds Over 9/11 Aid," *Education Week*, May 15, 2002, vol. 21, p. 24, 26. Emily Gest and Elizabeth Hays, "PS89 Students Get a New Home," *New York Daily News*, Oct. 23, 2001, p. 21. Karen W. Arenson, "Displaced Children Go to New School, Again," *The New York Times*, Oct. 23, 2001, p. D6. Nick Chiles, "Schools Open at Last; New Commutes for Many Students," *Newsday*, Sept. 20, 2001, p. A12.

<sup>341</sup>Joyce Purnick, "In Schools, a Hidden Toll of Sept. 11," *The New York Times*, May 13, 2002, p. B1. See also: Abby Goodnough, "Post 9/11 Pain Found to Linger in Young Minds," *The New York Times*, May 2, 2002, p. A1, A24. Christine Haughney, "N.Y. Students Still Distressed from Sept. 11," *The Washington Post*, May 2, 2002, p. A6. Joe Williams, "Schools Still Full of 9/11 Woes," *Daily News*, May 2, 2002, p. 6.

<sup>342</sup>Edward Wyatt, "Students Set to Return to Stuyvesant Near Ruins," *The New York Times*, Oct. 9, 2001, p. B14. Joe Williams, "Post-9/11 Ills Found at HS, Many Stuyvesant Staffers Suffered," *New York Daily News*, May 11, 2002, p. 7.

<sup>343</sup>Karen W. Arenson, "Displaced Children Go to New School, Again," *The New York Times*, Oct. 23, 2001, p. D6. Abby Goodnough, "Schools Closed by Disaster Are Losing Some Children," *The New York Times*, Sept. 27, 2001, p. D3.

<sup>344</sup>"Disaster Relief for the Schools," *The New York Times*, Oct. 13, 2001, p. A22.

continue, some areas of dispute remain.<sup>345</sup> As of late November 2001, FEMA had not reimbursed the New York City board of education for cleaning and decontaminating schools.<sup>346</sup> By early June, 2002, however, FEMA “told school officials yesterday that it would reimburse \$11.7 million spent in cleanup and environmental testing since Sept. 11. The agency said it would eventually also cover \$5 million spent to clean schools in buildings leased by the Board of Ed.”<sup>347</sup>

New York University (NYU) reportedly was told by FEMA that more than \$25 million in losses stemming from the September attacks would not be reimbursed because it is not considered a “critical” public service.<sup>348</sup> The inability of FEMA to reimburse NYU stems from a provision enacted in the Disaster Mitigation Act of 2000 that distinguishes “critical” services from others.<sup>349</sup>

**Background.** The Stafford Act has historically been viewed as “bricks and mortar” legislation that provided assistance in rebuilding structures. The Act authorizes some assistance for service delivery costs or replacement (notably emergency communications and transportation),<sup>350</sup> but generally not for operating losses or alternative services.

There is some historical precedent, however, for the provision of federal assistance for school operations. Legislation enacted in 1965 (and subsequently amended) authorized the commissioner of education in the Department of Health, Education, and Welfare to provide disaster assistance to local educational agencies “to provide free public education” to children attending schools that had been

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<sup>345</sup>One news report noted, “After much pressure and some negotiating, the Federal Emergency Management Agency yesterday deemed most of New York University’s \$9.5 million in expenses related to the Sept. 11 terrorist attacks eligible for reimbursement.” Ellen Yan, “FEMA Agrees to Aid NYU,” *Newsday*, May 16, 2002, p. A28. Also see “Findings and Purposes” in H.R. 4663, 107<sup>th</sup> Congress.

<sup>346</sup>Timothy Burger and Alison Gendar, “Ed Board Wants Aid for Cleanup,” *New York Daily News*, Nov. 22, 2001, p. 26.

<sup>347</sup>Alison Gendar and Greg Gittrich, “Feds to Foot \$11.7M Bill for School WTC Cleanup,” *New York Daily News*, June 4, 2002, p. 10.

<sup>348</sup>Karen W. Arenson, “N.Y.U. Gets a Rebuff from FEMA in Aid Quest,” *The New York Times*, Feb. 23, 2002, p. B4.

<sup>349</sup>42 U.S.C. 5172(a), 114 Stat. 1562. “(A) IN GENERAL. The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or (ii) the owner or operator of the facility—(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and (II)(aa) has been determined to be ineligible for such a loan; or (bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) DEFINITION OF CRITICAL SERVICES. In this paragraph, the term ‘critical services’ includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.”

<sup>350</sup>42 U.S.C. 5185, 5186.

disrupted by a declared disaster.<sup>351</sup> The legislation also authorized aid for the reconstruction of damaged school facilities, assistance not otherwise authorized until 1974.<sup>352</sup> Disaster assistance for school systems was administered by the Office of Education under the “pinpoint” disaster program.<sup>353</sup> According to the the U.S. Department of Education (ED) budget justifications for FY1992, “beginning in fiscal year 1992, responsibility for disaster assistance will be transferred to [FEMA], where it will be administered as part of the Disaster Relief Fund.”<sup>354</sup> ED justified this transfer as a means to reduce duplication, reduce administrative cost, and improve the timeliness and effectiveness of federal disaster assistance to schools. Subsequently ED’s authorities for disaster assistance were repealed in the Improving America’s Schools Act of 1994.<sup>355</sup>

In addition to the “pinpoint” program, Congress authorized aid in 1966 to public institutions of higher education for the reconstruction of facilities and operating expenses. In language similar to that used for the pinpoint program, the statute authorized the commissioner of education to provide (in addition to construction funding) operations aid as follows:

to provide funds to such institution in an amount which he considers necessary to replace equipment, maintenance supplies, and instructional supplies (including books, and curricular and program materials) destroyed or seriously damaged as a result of the disaster, or to lease or otherwise provide (other than by acquisition of land or construction of academic facilities) such facilities needed to replace temporarily those academic facilities which have been made unavailable as a result of the disaster, or both.<sup>356</sup>

**Policy Options.** Congress might consider a range of policy options that address the needs of educational systems after terrorist attacks.

***Maintain the Status Quo.*** Some observers believe the Stafford Act’s provision regarding the repair or reconstruction of damaged or destroyed public facilities strikes an appropriate balance between federal and state and local funding. The President has discretion under the Act to define “critical services.” Negotiations

<sup>351</sup>P.L. 89-313, 79 Stat. 1158-1161, significantly amended by P.L. 90-247, 81 Stat. 783-813. For citations to other amendments to this authority see: 20 U.S.C. 241-1, 646, 647, “Historical and Statutory Notes.”

<sup>352</sup>The 1965 Act authorized aid for the construction of school facilities damaged or destroyed in a presidential disaster declaration issued pursuant to P.L. [81]-875, enacted in 1950. In 1974 Congress authorized the President to provide assistance for the repair of non-federal public facilities (P.L. 93-288). As a result, FEMA and the Office (later the Department) of Education were both authorized to rebuild schools damaged or destroyed until the 1994 legislation repealed the latter’s authority.

<sup>353</sup>U.S. Department of Health, Education, and Welfare, “School Assistance in Cases of Certain Disasters,” *Federal Register*, vol. 41, Nov. 17, 1976, pp. 50776-59785.

<sup>354</sup>U.S. Department of Education. Justifications of Budget Estimates. Fiscal Year 1992, p. B-33.

<sup>355</sup>P.L. 103-382, 108 Stat. 3965.

<sup>356</sup>Disaster Relief Act of 1966, P.L. 89-769, 80 Stat. 1318-1319.



with FEMA officials since the September 11 attack appear to have resulted in the approval of funds previously disallowed for certain operations costs. Therefore, interpretation of the Stafford Act or of other statutes such as the Safe and Drug Free School Act, may be sufficient to respond appropriately to future needs of education systems.

*Pro.* The reconstruction of damaged or destroyed facilities is arguably a matter beyond the financial means of communities devastated by a disaster. Current law does allow some administrative discretion to determine which damages are most severe and require federal assistance. Federal assistance centered on public facilities and institutions is likely to be more effective than if broadly dispersed.

*Con.* Various education institutions, public and private, in New York City have incurred millions of dollars in losses that, to date, appear to be ineligible for federal assistance. The costs of recovering from a terrorist attack include a wide range of activities, not just repair or reconstruction of damaged or destroyed facilities.

***Enact New Authority for Education Assistance.*** Broad discretionary authority could be granted to the secretary of education to identify and help meet needs of educational systems not met under the Stafford Act. For example, certain terrorist acts, such as the release of chemical weapons in a school facility, could make the structure uninhabitable for years without extensive decontamination. As a result, temporary school facilities, and operating needs, might need to be established.

*Pro.* Such an authority could be used by Congress to target disaster assistance funding for school-site disasters and would locate the oversight of the provision of such funds in a department familiar with the needs and circumstances of state and local educational agencies.

*Con.* Providing authority for separate school-site disaster relief could result in similar problems that ED pointed to under the old program: duplication, confusion among applicants, and possibly ineffective and delayed federal response. Creating a separate role for ED in this arena could be seen by some as a major expansion of the federal role in education, particularly with respect to areas, such as construction, transportation, and teacher compensation, in which the federal involvement has been relatively minor.

***Broaden FEMA's Authority for Educational Assistance.*** Congress might mandate that FEMA identify, evaluate, and respond to needs of educational systems not currently met under the Stafford Act. This would effectively expand FEMA's responsibility beyond replacing "bricks and mortar" to providing assistance to ensure that educational systems continue to operate after a terrorist attack. Examples of assistance might include cleaning or replacing textbooks and other school materials; providing transportation for students and teachers to alternative, uncontaminated sites; providing counseling services; and decontaminating facilities and public vehicles, such as school buses. Such a proposal has been acted upon by the Senate. The supplemental appropriations legislation for FY2002 includes a provision adopted by the Senate Appropriations Committee that would allocate FEMA funds as follows:

In addition, the Committee directs that funding is to be provided to compensate the New York City Board of Education for costs stemming from the September 11, 2001 terrorist attacks, for activities including additional classroom instruction time, mental health, trauma counseling, and other support services; guidance and grief counseling; clean-up and structural inspections and repairs of school facilities; student relocations, lost textbooks and perishable food.<sup>357</sup>

*Pro.* A broader FEMA authority would help to ensure that school-related assistance, which FEMA has at times been hesitant to provide, would be available through the central federal agency responsible for disaster assistance in general.

*Con.* FEMA might lack the expertise and experience for dealing with and understanding the needs of state and local educational agencies and individual schools. This would be viewed as a major increase in federal responsibility for decisions and actions that many might believe are more appropriate administered at the state and local level.

**Amend the “Critical Services” Provision.** The cost-saving provision enacted in the Disaster Mitigation Act (DMA) of 2000 that excludes non-profit educational facilities from the “critical services” definition for permanent work might be amended to include such facilities.

*Pro.* While the President has authority to define such services, the enactment of legislation to specifically include educational facilities would obviate the need for Members of Congress and state officials to negotiate with the Administration over the provision of permanent work assistance.

*Con.* The needs of areas stricken by terrorist attacks could differ, and public services other than educational systems might require assistance in the future. Expanding the statutory definition of critical services would compete with other pressing demands and would run counter to the cost-savings provisions in the DMA of 2000.

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<sup>357</sup>U.S. Congress, Senate, Committee on Appropriations, *Making Supplemental Appropriations for Further Recovery from and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, report to accompany S. 2551, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Rept. 107-156 (Washington: GPO, 2002), p. 101.

## Conclusion

Decades of federal disaster assistance and, most significantly, the considerable federal assistance provided after the September 11 terrorist attacks, suggest that the federal government will continue to be involved in providing assistance to state and local governments of areas attacked, or about to be attacked, by terrorists. The current scope and boundaries of that federal aid could continue under existing policies and administrative practices.

Questions have been raised, however, about some of the means by which assistance was, or was not, provided after September 11, particularly in New York City. Some have also expressed concern that the types and amounts of assistance provided did not meet expectations or the precedents established after previous disasters. While many expectations cannot be met, it may be argued that federal policies could be reevaluated to ensure that needs are fully answered, services efficiently delivered, and federal resources prudently allocated. As noted in congressional testimony submitted by the comptroller general, a process of policy evaluation might be of use to Congress as it considers many demands for federal resources in the future.

Among other things, it is incumbent on the federal government to formulate realistic budget and resource plans to support the implementation of an efficient and effective homeland security program.... While we believe that a robust homeland security program is critical to the nation's protection and Prosperity, it must be developed in a manner that is targeted to areas of greatest need and avoids wasteful, unfocused or "hitchhiker" spending.... A fundamental review of existing programs and operations can create much-needed fiscal flexibility to address emerging needs by weeding out programs that are out-dated, poorly targeted, or inefficiently designed and managed.<sup>358</sup>

## Summary of Policy Options

In evaluating these and other issues that have been raised by concerned observers and the media since September 11, Congress may exercise one or both of two general approaches—(1) keep existing policies in place and address the questions or issues through oversight activities, appropriations, or communications with the Administration, or (2) consider new policies or changes to existing policies. The policy options segment of each issue section in this report presents information on the first option ("Maintain the Status Quo"). This option might be exercised because insufficient information exists, reports of failures or deficiencies have been inaccurate, or the existing policy, in the light of other pressing business, may be adequate at least for now, among other reasons.

Congress might also elect to consider policy options in light of some of the questions raised with regard to the assistance provided after the terrorist attacks of

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<sup>358</sup>U.S. General Accounting Office, Statement of David W. Walker, *Homeland Security: Responsibility and Accountability for Achieving National Goals*, GAO testimony GAO-02-627T (Washington: April 11, 2002), p. 3.

September 11. Should Congress consider new policies or policy changes, Members may be called upon to evaluate options, each with costs and benefits, such as those discussed in this report. Following are summary statements of the policy options presented for each issue in this report.

### **Administrative Issues.**

#### ***Definition of “Major Disaster” and “Emergency”.***

1. Increase the discretion of the President to determine when a “major disaster” or an “emergency” has occurred (see page 23).
2. Expand the role of Congress in the process of the determination of whether a major disaster or emergency has occurred (see page 24).
3. Enact a new statute to authorize the President to issue a declaration after any terrorist attack (see page 25).
4. Extend the authority to issue an emergency declaration to other executive branch officials (see page 26).

#### ***Eligibility for Stafford Act Assistance.***

5. Qualify certain for-profit entities as eligible for Stafford Act grant assistance (see page 32).
6. Amend the “critical services” provision of the Stafford Act to include other public services (see page 33).

#### ***Federal Coordination of Recovery Assistance.***

7. Create a special office to coordinate federal recovery assistance activities (see page 38).
8. Expand existing waiver authorities for federal agencies to expedite federal recovery assistance (see page 40).
9. Increase funding and authorize funds for pre-disaster planning grants and other recovery activities (see page 41).
10. Require the establishment of mechanisms to facilitate public involvement in recovery decisions (see page 42).

#### ***Expedited Public Health Studies.***

11. Amend the Public Health Service Act to authorize accelerated reviews of applications to study public health threats (see page 46).

***Tracking Federal Costs of Disasters.***

12. Require that the Office of Management and Budget collect and publish comprehensive data on federal disaster assistance costs (see page 51).
13. Require that the Department of Homeland Security, proposed to be established, undertake responsibility for collecting disaster assistance cost data (see page 51).

***Policy Issues.***

***Local Government Revenue Loss.***

14. Amend the Stafford Act to authorize the President to provide grants instead of loans for tax revenue losses incurred by communities (see page 58).
15. Lower the interest rates charged on community disaster loans provided to local governments (see page 59).
16. Eliminate the \$5 million ceiling established in 2000 for the community disaster loan program (see page 59).
17. Eliminate the community disaster loan program from the Stafford Act (see page 60).

***Reimbursement for Security Alerts.***

18. Enact new legislation to provide a range of assistance to states and communities that incur high costs in responding to threat alerts issued by the Director of the Office of Homeland Security (see page 65).
19. Detail National Guard units to federal law enforcement agencies to improve readiness in high security alert areas or situations (see page 65).
20. Authorize the President to federalize National Guard units for security alerts and to reimburse the units through the Stafford Act (see page 66).
21. Enact legislation to modify the structure and role of the armed forces in meeting homeland security threats (see page 67).

***Environmental Hazard Assessment and Communication.***

22. Direct a “blue ribbon” panel or the National Academy of Sciences to study environmental data collection, interpretation, and communication issues associated with terrorist attacks and submit recommendations to Congress (see page 81).
23. Authorize the EPA to develop environmental hazard exposure guidelines for emergency situations (see page 82).

24. Clarify authority regarding coordination of environmental monitoring and analysis in the aftermath of a terrorist attack (see page 83).
25. Codify in statute procedures and roles currently embodied in the Federal Response Plan or the National Contingency Plan (see page 85).

***Indoor Air Testing and Cleaning.***

26. Clarify EPA authority with respect to indoor air contamination (see page 89).
27. Reduce the discretion of the EPA to ensure protection of building occupants (see page 89).

***Temporary Housing.***

28. Modify the Stafford Act to establish health risk as a measure of temporary housing needs (see page 93).

***Small Business Assistance.***

29. Enact legislation to proscribe subsidies that encourage businesses to relocate from jurisdictions affected by disasters, and provide incentives to rebuild affected areas (see page 97).
30. Mandate that federal facilities be built in disaster areas as a way to stimulate economic activity for small businesses after terrorist attacks (see page 98).
31. Provide grants instead of loans to small businesses affected by terrorist attacks (see page 98).
32. Require that federal agencies providing economic recovery assistance establish a central registry of interpreters to assure communication with disaster victims (see page 99).

***Assistance to Education Systems.***

33. Enact new authority for the secretary of education to identify and meet education needs not met under the Stafford Act (see page 104).
34. Expand the authority of FEMA (or the President) to provide assistance to educational systems affected by a major disaster (see page 104).
35. Amend the “critical services” provision of the Stafford Act to include educational facilities (see page 105).