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An Examination of Federal Disaster Relief Under the Budget Control Act

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Summary

On August 2, 2011, the President signed into law the Budget Control Act of 2011 (BCA, P.L. 112-25), which included a number of budget-controlling mechanisms. As part of the legislation, caps were placed on discretionary spending for the next ten years, beginning with FY2012. If these caps are exceeded, the BCA provides for an automatic rescission—known as sequestration—to take place across most discretionary budget accounts to reduce the effective level of spending to the level of the cap. Additionally, special accommodations were made in the BCA to address the unpredictable nature of disaster assistance while attempting to impose discipline on the amount spent by the federal government on disasters. The BCA created an allowable adjustment specifically to cover disaster relief (defined as the costs of major disasters under the Stafford Act), separate from emergency appropriations.

The limit established by the BCA on adjustments to the caps for disaster relief is based on the average funding provided for disaster relief over the previous ten years, excluding the highest and lowest annual amounts, calculated by the Office of Management and Budget. If Congress spends less than that average on disaster relief in a given fiscal year, the caps can be further adjusted upward by the unspent amount in the following year. The existence of this "allowable adjustment" for disaster relief has influenced the way that the Disaster Relief Fund (DRF) is structured, allowing a larger overall funding stream to be provided in annual appropriations without it counting against the bill's allocation of discretionary spending.

On October 29, 2013, Hurricane Sandy came ashore, causing loss of life and billions of dollars in damage. The Administration proposed a relief package that exceeded the allowable adjustment for disaster relief under the BCA. The Administration requested, and Congress for the most part agreed, to designate the supplemental funding provided in the wake of Hurricane Sandy as emergency spending outside of the limited disaster relief adjustment made available under the BCA. The history of the legislative response to this disaster demonstrated that while the BCA included an accommodation to provide dedicated additional funding for many disasters, catastrophic events such as Sandy remain a challenge to those developing long-term budgeting strategies.

This challenge could be compounded by the fact that by design, the methodology used by the Office of Management and Budget (OMB) to calculate the allowable adjustment could not capture the full range of disaster relief spending, and that the structure of the formula for calculating the average provides smaller allowable adjustments in future years. The sizeable initial disaster relief expenditures for Hurricane Katrina and the other 2005 storms will begin to lose relevance in calculating the allowable adjustment for disaster assistance for FY2016, and will no longer impact calculations for the allowable adjustment in FY2017. Once FY2005 and FY2006 rotate out, there will be a corresponding drop in the allowable disaster assistance adjustment.

In the face of these challenges, Congress could choose to continue to use emergency funding to meet unbudgeted disaster relief needs, or change the allowable adjustment mechanism. Congress may also consider changing the formula used for calculating the allowable adjustment. Another potential option would be to take other steps to mitigate the impact of federal disaster relief spending on the budget, including altering the underlying laws, if Congress believes further legislative controls for federal disaster relief expenditures are a priority.

This report will be updated as needed.

Contents

Introduction 1
Disaster Relief Funding: A Brief Overview 2
Budgeting the Disaster Relief Fund 3
Supplemental Appropriations 4
Disaster Spending Under the Budget Control Act 7
OMB Reporting and Calculations 9
The BCA and Disaster Relief in Practice: Hurricane Sandy 9
Analysis and Potential Policy Implications 10
Timeframes for Congressional Action 10
Potential Implications of the Rising Number of Stafford Act Declarations 11
Funding Relief Efforts in Severe Disaster Years Going Forward 12
Offsetting the Cost of Disaster Relief 13
Calculating the Disaster Relief Allowable Adjustment 14
Expenditures Omitted from the 10-Year Average 14
Pre-BCA Disaster Assistance Spending 15
Disaster Relief Spending Under the BCA 16
Other Types of Excluded Stafford Assistance 17
Concluding Observations 18

Figures

Figure 1. Disasters Costing FEMA $500 Million or More, FY1996-FY2015 4
Figure 2. Disaster Relief Fund, Administration Requests and Appropriations, FY1996-FY2015 6

Tables

Table 1. Selected Examples Supplemental Funding for Large-Scale Disasters 10

Contacts

Author Information 19
Acknowledgments 19

Introduction

Federal funding provided by Congress for major disasters has grown considerably in the past decade, driven principally by the hurricane seasons of 2005, 2008, and Hurricane Sandy.[1] As concern over the size of federal budget deficits and the national debt has grown, so has congressional attention to both the amount of funding the federal government provides to states and localities for disaster assistance, and the processes the federal government uses to provide that assistance. Although funds have been reallocated at times from one account to another to provide for disaster-related assistance, disaster relief funding has historically not been fully offset. In addition, assistance for large-scale disasters has usually been funded outside traditional budget constraints.

As a result of the concern over the size of the deficit and rising level of national debt, Congress has implemented measures to limit federal spending. These include the Budget Control Act of 2011 (P.L. 112-25, hereinafter the BCA), which established a range of budget-controlling mechanisms.[2] Caps were placed on discretionary spending from FY2012 through FY2021. If these caps are exceeded, an automatic cancellation of budget resources—known as sequestration—would take place across most discretionary budget accounts to reduce spending down to the cap.[3]

However, the BCA includes a mechanism that recognizes the unexpected nature of disasters and the periodic need for disaster relief funding beyond what the budget might envision. This mechanism has changed the way Congress approaches spending on major disasters allowing for a less crisis-driven debate on providing relief funding in the immediate wake of an incident and providing somewhat more transparency into federal disaster relief spending.

The first section of this report addresses the pre-BCA funding mechanism for major disaster declarations, including the role of the President's Disaster Relief Fund (DRF).[4] Next, this report provides a basic overview of how that funding mechanism has evolved under the BCA, and how Hurricane Sandy was addressed under that mechanism. Finally, the report explores a number of other issues pertinent to disaster relief funding in the BCA-regulated environment, including

- time frames for congressional action after a large-scale disaster strikes;
- the implications of the rising number of Stafford Act declarations;
- funding disaster relief efforts in severe disaster years;
- offsetting the cost of disaster relief;

[1] For information on federal expenditures for the 2005 and 2008 hurricane seasons, see CRS Report R43139, *Federal Disaster Assistance after Hurricanes Katrina, Rita, Wilma, Gustav, and Ike*, coordinated by Bruce R. Lindsay and Jared C. Nagel. Data and information on disasters can also be found at NOAA: National Centers for Environmental Information, "Billion-Dollar Weather and Climate Disasters: Overview," http://www.ncdc.noaa.gov/oa/reports/billionz.html.

[2] For further analysis of the Budget Control Act see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan.

[3] OMB ordered budget sequestration on March 1, 2013, because of the failure of the Joint Select Committee on Deficit Reduction to propose budget reductions by January 2012 and in the absence of a "grand bargain" for deficit reduction. For more information on the sequestration, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

[4] For more information on the DRF, see CRS Report R43537, *FEMA's Disaster Relief Fund: Overview and Selected Issues*, by Bruce R. Lindsay.

- calculating the allowable adjustment for disaster relief;
- the degree to which different types of disaster relief are included in the methodology for calculating the 10-year average on disaster relief spending; and
- the possible implications of excluding Stafford Act assistance for emergencies and fires from the allowable adjustment calculation.

Disaster Relief Funding: A Brief Overview

The DRF is a no-year account[5] that is used to fund response activities and pay for ongoing recovery programs resulting from declared major disasters, emergencies, and Fire Management Assistance Grants (FMAGs).[6] The majority of its funding goes to pay for response to and recovery from major disasters.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, hereinafter the Stafford Act)[7] authorizes the President to declare a major disaster in response to a governor or tribal nation leader's request for federal assistance.[8] The declaration enables federal agencies to provide assistance to state and local governments overwhelmed by the incident. While the majority of federal assistance for major disasters to states and localities is provided through the Federal Emergency Management Agency (FEMA), other federal agencies and offices also may provide assistance once a major disaster has been declared. These agencies include the U.S. Army Corps of Engineers, the Department of Transportation, and the Department of Education among others.[9] The assistance provided by these agencies may be funded through their own budgets, but in many cases is requested and paid for by FEMA.[10]

In some circumstances, however, federal agencies have the authority to provide assistance regardless of whether a disaster is declared under the Stafford Act. For example, under the Small Business Act, the Administrator of the Small Business Administration (SBA) is authorized to issue declarations that make loans available to homeowners and businesses through the SBA Disaster Loan Program.[11] This report focuses primarily on the DRF, as it has been the most commonly used tool to fund disaster relief efforts.

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[5] While most appropriations expire after a set period of time, no-year appropriations are available until expended. This is helpful for disaster recovery funding since infrastructure repair and mitigation projects can stretch out over several years.

[6] FMAGs and emergencies under the Stafford Act are discussed later in the report. For more information on FMAGS see CRS Report R43738, *Fire Management Assistance Grants: Frequently Asked Questions*, coordinated by Bruce R. Lindsay.

[7] 42 U.S.C. 5121 et seq. For further analysis on Stafford Act disaster assistance see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Francis X. McCarthy.

[8] For further analysis on emergency and disaster declarations see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Francis X. McCarthy. See also CRS Report R42702, *Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay and Francis X. McCarthy.

[9] For more information on various types of federal assistance see CRS Report R43560, *Deployable Federal Assets Supporting Domestic Disaster Response Operations: Summary and Considerations for Congress*, coordinated by Jared T. Brown.

[10] Such payments are known as "mission assignments." Mission assignments are directives from FEMA (on behalf of the requesting state) to other federal agencies to perform specific work in disaster operations on a reimbursable basis.

[11] For more information on the SBA Disaster Loan Program, see CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*, by Bruce R. Lindsay. The program is authorized by P.L. 85-536, Section 7(b) 72 Stat. 387, as amended.

Budgeting the Disaster Relief Fund

The DRF is generally funded through the annual appropriations process, which begins with the Administration's formulation of the budget request for the account. Prior to the BCA, the data points used to determine budget requests were: (1) funding levels currently available in the DRF; (2) the five-year rolling average of "normal" disaster costs;[12] (3) pending recovery costs; and (4) the estimated monthly "recoveries" of unobligated funds.[13] The current budgetary practice is the same; however, a ten-year rolling average of normal disaster costs is being used rather than a five-year rolling average.[14]

Based on these data points, the Administration's request for the DRF from FY2002 to FY2011 was roughly $1.9 billion per year. Yet the average spend-out rate[15] for the DRF during that period was $350 million per month, or $4.2 billion per year.[16] Without resources beyond the annual appropriation, the DRF would have faced a shortfall in its budget in an average operating year. When funds neared depletion, Congress usually provided additional funding through supplemental appropriations.[17] In some fiscal years, Congress passed two or three supplemental appropriations to fund the DRF.

Two factors that may have contributed to these chronic shortfalls in the DRF are the decision not to budget for high-cost disasters in the annual appropriations process, and the unpredictability of the distribution of disaster events over time.

According to data provided by FEMA, since 1996 there have been 16 declared major disasters that have cost $500 million or more (see **Figure 1**). However, disasters costing more than $500 million were considered atypical events—outliers—when FEMA made its annual appropriations request for each new fiscal year. This guideline had been used for over a decade without being adjusted for inflation. It could be argued incidents costing $500 million or more occur too frequently to be omitted and that their omission from the budget calculation led to lower budget requests, which in turn may have encouraged lower appropriations for the DRF.

[12] Normal disasters are declared incidents that cost less than $500 million. Disasters costing over $500 million are considered outliers and are removed from the calculation.

[13] These may occur, for example, when funds remain unspent after a project is completed for less than the estimated cost or when a project for which funds have been obligated changes its scope and certain budgeted costs become ineligible.

[14] This methodology was described during discussions with FEMA Congressional Affairs.

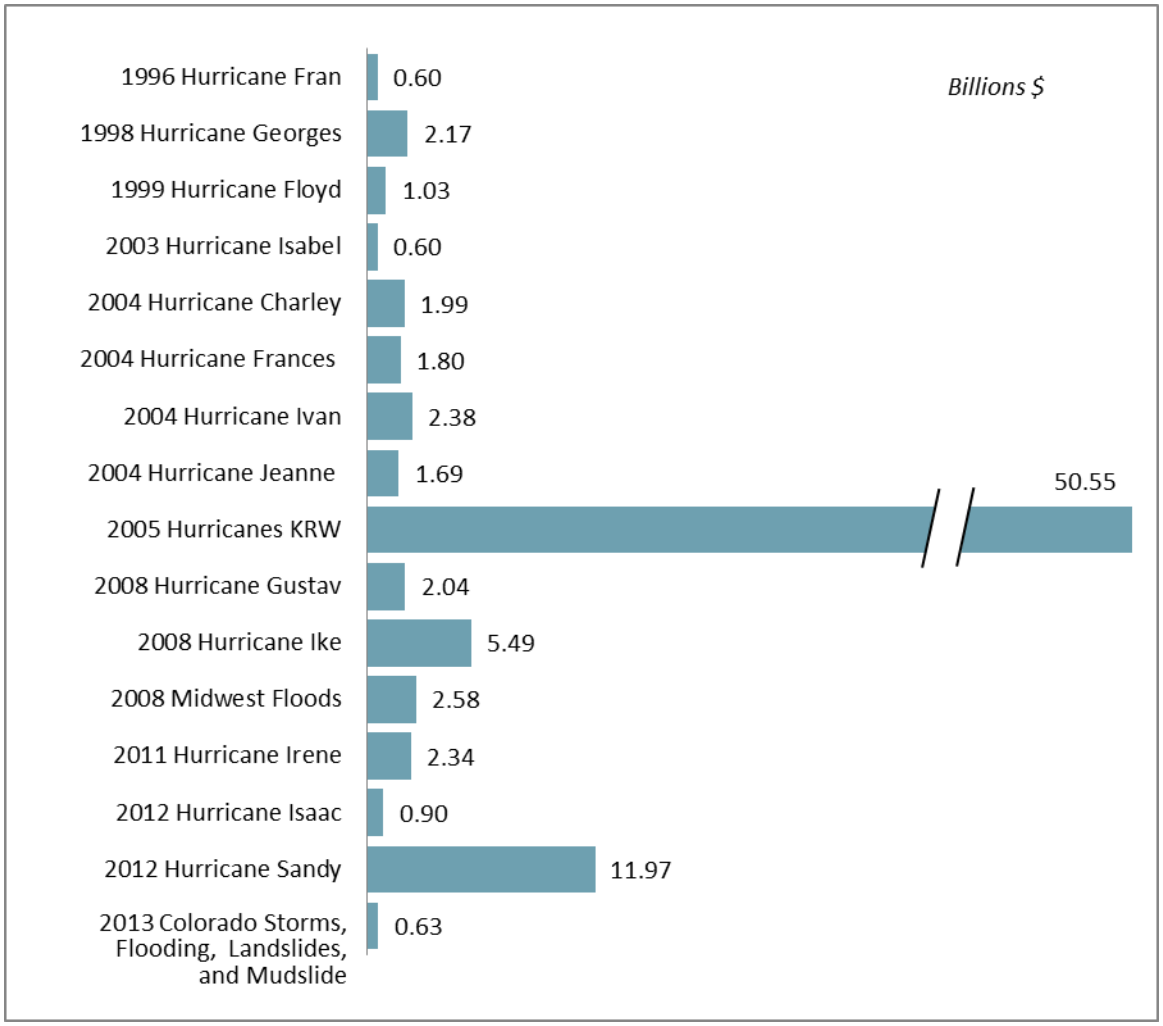
[15] The spend-out rate refers to the amount of money paid out of the account for a given period of time.

[16] Based on a CRS discussion with FEMA staff from the Office of the Chief Financial Officer.

[17] For more information on supplemental funding for disaster assistance see CRS Report R43665, *Supplemental Appropriations for Disaster Assistance: Summary Data and Analysis*, by Bruce R. Lindsay and Justin Murray.

Figure 1. Disasters Costing FEMA $500 Million or More, FY1996-FY2015

(billions of $)



Source: Based on data provided to the authors by FEMA's Legislative Affairs Division.

Note: KRW denotes Katrina, Rita, and Wilma. Figures based on FEMA expenditures for disaster assistance. **Figure 1** does not provide data on funding data provided by other agencies. Spending on recovery continues for many of these events; these amounts represent a snapshot of disaster costs as of November 2015.

Supplemental Appropriations

Congress generally provides additional budget authority to the DRF when its balance is deemed insufficient to provide for assistance and recovery projects.[18] This is done through supplemental appropriations legislation.[19] The use of supplemental appropriations as a vehicle to pay for disaster assistance has been of concern to some because traditionally they have been designated as emergency appropriations—allowing amounts to be provided in excess of discretionary spending limits. In addition, they often move through Congress on an expedited basis, not

[18] Congress also appropriates disaster funds to other accounts administered by other federal agencies pursuant to federal statutes that authorize specific types of disaster relief.

[19] For further analysis on emergency supplemental appropriations see CRS Report R43665, *Supplemental Appropriations for Disaster Assistance: Summary Data and Analysis*, by Bruce R. Lindsay and Justin Murray.

undergoing traditional markup processes, and sometimes under terms that limit floor debate and the amendment process.

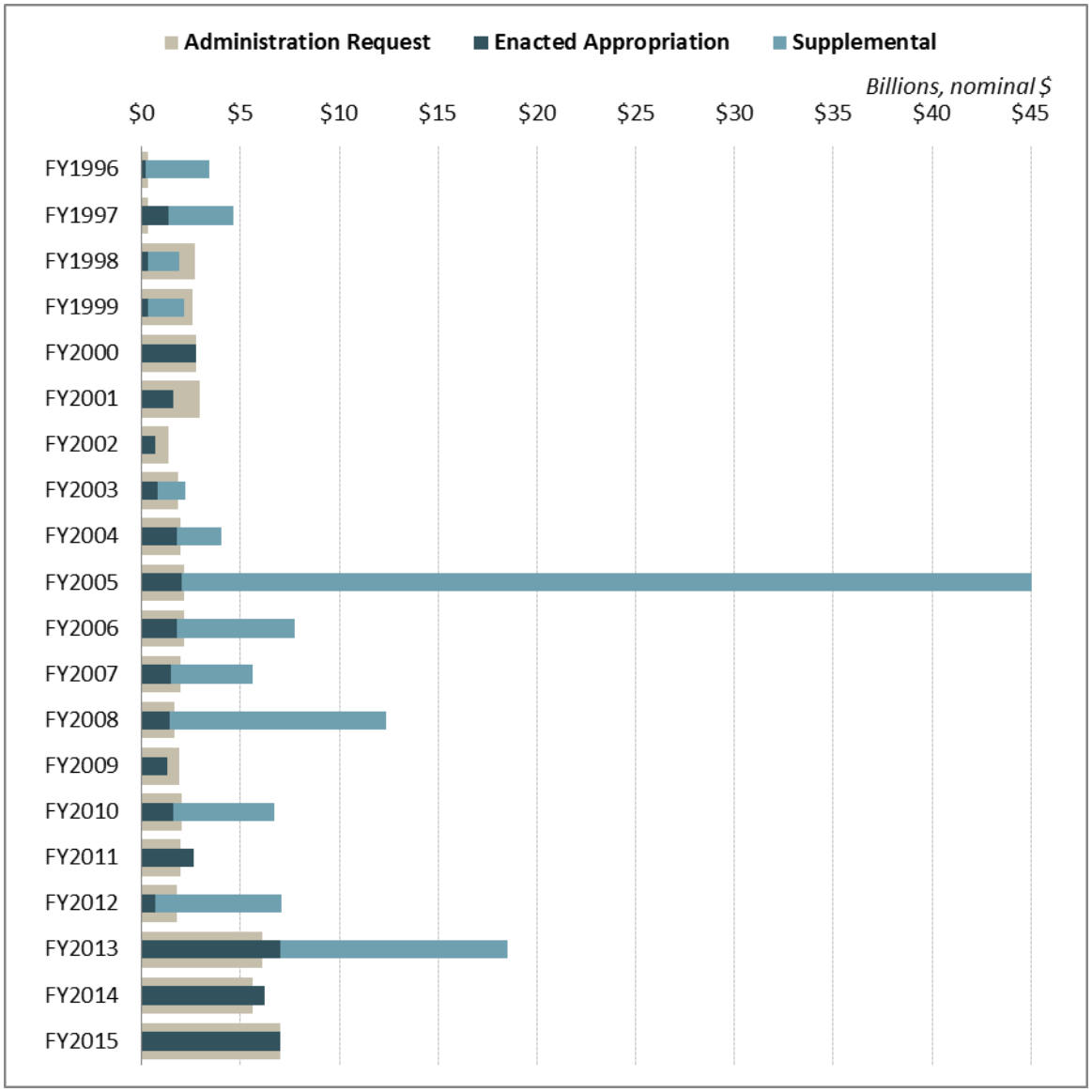
Some critics of past policies have asserted that it is a common tactic for Administrations to request lower funding levels than needed for the DRF in order to mask potential disaster costs and project smaller deficits in their initial budget documents, allowing supplemental appropriations to fill the gap later.[20]

The combined effect of these factors is reflected in **Figure 2**. The wider bars show the Administration's initial budget request level for the DRF, while the overlying narrow bars show enacted annual and supplemental appropriations for those fiscal years.

[20] For example, see Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, Washington, DC, February 26, 2009, p. 36, at http://www.gpoaccess.gov/usbudget/fy10/pdf/fy10-newera.pdf.

Figure 2. Disaster Relief Fund, Administration Requests and Appropriations, FY1996-FY2015

(budget authority in billions of dollars)



Source: CRS data using Administration budget documents and appropriations statutes.

Note: Figures have been rounded. Amounts reflect requests and appropriations in a given fiscal year, without regard to emergency designations under budget control legislation or linkage to particular disasters.

As shown in **Figure 2**, from FY1996 to FY2015, the DRF needed supplemental funding in 12 years. The data also demonstrate higher appropriations for the DRF after the passage of the BCA. It may be too early, however, to determine whether the larger appropriations have reduced the reliance on supplemental appropriations to help the federal government meet disaster needs.

Disaster Spending Under the Budget Control Act

The BCA allows for adjustments to the cap in a handful of situations, essentially raising it to allow for certain categories of spending. One of those adjustments is for emergencies, which is familiar to many observers of the budget process, but a new category of spending was defined in law for "disaster relief," allowing it to be treated separately from other emergencies.

Under the BCA, the discretionary spending limit can be adjusted upward to make room for an uncapped amount of emergency spending and adds the following definitions to existing budget law:

> (20) The term "emergency" means a situation that—
> (A) requires new budget authority and outlays (or new budget authority and the outlays flowing there from) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and
> (B) is unanticipated.
> (21) The term "unanticipated" means that the underlying situation is—
> (A) sudden, which means quickly coming into being or not building up over time;
> (B) urgent, which means a pressing and compelling need requiring immediate action;
> (C) unforeseen, which means not predicted or anticipated as an emerging need; and
> (D) temporary, which means not of a permanent duration.[21]

Prior to the BCA's enactment, supplemental appropriations for disaster relief were often designated as emergency spending, and for a limited period even some of the annual appropriations requests included an emergency designation.

However, the enactment of the BCA distinguishes disaster relief spending, though often unanticipated, as separate from emergency spending. A separate allowable adjustment is created for disaster relief spending that some have interpreted as a limit on certain types of disaster relief funding. "Disaster relief" is specifically defined under the BCA as follows:

> (iii) For the purposes of this subparagraph, the term 'disaster relief' means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)). [Determination of a major disaster[22]]
>
> (iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) [the unlimited adjustment for emergency spending] for the fiscal year.[23]

The limit established by the BCA on adjustments to the caps for disaster relief is based on the average funding provided for disaster relief over the last ten years, excluding the highest and lowest annual amounts, calculated by the Office of Management and Budget (OMB).[24] If Congress spends less than that average on disaster relief in a given fiscal year, the caps can be further adjusted upward by the unspent amount in the following year. It is important to note that this adjustment limitation is not a restriction on disaster assistance per se—rather it is a restriction

[21] Budget Control Act of 2011, P.L. 112-25, §102.

[22] Under a major disaster declaration, state and local governments and certain nonprofit organizations are eligible (if so designated) for assistance for the repair or restoration of public infrastructure such as roads and buildings. A major disaster declaration may also include temporary housing, other needs assistance, unemployment assistance, and crisis counseling for families and individuals. The governor of the impacted state requests the types of assistance considered necessary to address the needs of the state.

[23] Budget Control Act of 2011, P.L. 112-25, §101. 125 Stat. 245.

[24] Ibid.

on how much the caps can be adjusted upward in a given fiscal year to accommodate the assistance. Also, spending within the cap or within the adjustment does not require offsets.

Because of the way "disaster relief" is defined in the BCA, not all of the DRF's activities are eligible for funding under the allowable adjustments. FEMA operating expenses, funding for Fire Management Assistance Grants, and emergencies under the Stafford Act are not eligible for funding under the adjustment, and are therefore funded through ordinary discretionary appropriations to the DRF that fall within the discretionary budget caps.

In response to the BCA, FEMA and the appropriations committees developed a new, two-part approach to accounting for disaster-related activity, with one approach for major disasters and another for all other DRF activity. As FEMA's first post-BCA budget justification described it:

> Essentially, requests for DRF funding for FEMA's Stafford Act programs and disaster support activities fall into two categories: disaster relief cap adjustment and base/non-major disasters. Funding requested under the disaster relief cap adjustment is for major disasters declared pursuant to the Stafford Act and designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the BBEDCA, as amended by the BCA. Funding requested under the base/non-major disasters category includes Emergencies, Pre-disaster Surge Support, Fire Management Assistance Grants and activities that are non-disaster specific, such as Disaster Readiness Support (DRS) activities (e.g., distribution centers, reservist training, etc.).[25]

According to FEMA, the funding request for major disasters is based on FEMA's spending plans for all past declared major disasters. The non-catastrophic funding request is based on a revised approach that uses a 10-year average for non-catastrophic events. FEMA argued that using a 10-year average of costs as opposed to the previous use of a 5-year average of costs "provides a more accurate projection of non-catastrophic needs since it normalizes the effects of outlier years."[26]

As demonstrated earlier in **Figure 2**, FEMA's two-part approach to accounting for disaster-related activity has coincided with higher Administration budget requests for DRF funding, which, in turn, may have led to higher annual appropriation amounts, as opposed to reliance on supplemental appropriations to fund disaster relief and recovery efforts.

As mentioned earlier, not all disaster relief flows through FEMA's DRF, and the allowable adjustment can be used to compensate for that non-DRF relief. For example, in FY2012, the allowable adjustment was used to pay for disaster relief programs under the Army Corps of Engineers, Department of Agriculture, Department of Housing and Urban Development, and Department of Transportation, as well as the DRF.[27]

Hurricane Sandy provided the first case where demand for disaster relief exceeded the allowable adjustment. For discussion of how this was resolved, see the *BCA and Disaster Relief in Practice: Hurricane Sandy* later in this report.

[25] U.S. Department of Homeland Security, "*Federal Emergency Management Agency Disaster Relief Fund: FY2013 Congressional Justification,*" p. 5, at http://www.fema.gov/pdf/about/budget/11f_fema_disaster_relief_fund_dhs_fy13_cj.pdf.

[26] Ibid., pp. 5-6.

[27] See P.L. 112-77.

OMB Reporting and Calculations

OMB manages the sequestration process and the limits on adjustments available to raise the discretionary spending limit. The BCA requires OMB to annually calculate the adjusted 10-year rolling average of disaster relief spending that sets the allowable adjustment for disaster relief. These calculations are included in the final sequestration report and sequestration update report issued under Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 as amended (BBEDCA).[28] OMB has not made any other estimates of "disaster relief" spending other than those called for by the BCA.

OMB's methodology for calculating the initial allowable adjustment was tied to the language of the BCA's definition of "disaster relief," which included only amounts that were appropriated or authorized through legislation that specifically referenced Section 102(2) of the Stafford Act. In its initial sequestration report under the BCA structure, OMB illustrated this by comparing two similar education programs targeting students in hurricane-affected areas.[29] One program had appropriations language specifically referencing the major disaster declaration (which was counted as disaster relief), and one program that had language only mentioning the hurricanes rather than the disaster declaration (which was *not* counted as disaster relief). In making its calculation, OMB included funding provided through both annual and supplemental appropriations bills for 29 individual accounts managed by 11 agencies and departments.

OMB makes a similar calculation each year, taking into account the latest information available on disaster funding for the 10 previous fiscal years, and excludes the highest and lowest years. If Congress does not designate appropriations equal to the 10-year rolling average, the unused portion of that average can be carried forward to the allowable adjustment for the next year.

The BCA and Disaster Relief in Practice: Hurricane Sandy

As a result of the process outlined above, OMB calculated the initial allowable adjustment for disaster relief for FY2012 as $11.3 billion.[30] $10.5 billion of that adjustment was used, leaving $799 million in carryover. When this carryover was added to the recalculated rolling average of $11 billion for FY2013, the allowable adjustment for disaster relief under the BCA for FY2013 rose to $11.8 billion.[31]

In FY2012, $6.4 billion of the allowable adjustment went to the DRF, and that in turn was calculated into the rate of spending provided for in P.L. 112-175, the continuing resolution for FY2013. No other disaster relief designations were carried forward in P.L. 112-175. It was this adjustment that provided a relatively significant balance for the DRF (roughly $5.4 billion) at the beginning of FY2013, which in turn may have reduced the urgency of the debate on Hurricane Sandy supplemental funding.[32]

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[28] 2 U.S.C. 904

[29] Office of Management and Budget, *OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate*, Washington, DC, September 1, 2011, pp. 2-3.

[30] Ibid, p. 1.

[31] Office of Management and Budget, Sequestration Update Report to the President and Congress for Fiscal Year 2013, Washington, DC, August 20, 2012, p. 16. The amounts have been rounded in this report.

[32] One sign of the DRF's healthy balance was the relative size of the DRF within the Supplemental (P.L. 113-2). While

P.L. 113-2, the Disaster Relief Appropriations Act, 2013 (that provided $50.5 billion in supplemental funding for Hurricane Sandy), used the remaining $5.4 billion of the allowable adjustment to provide additional resources for the DRF.[33] As a result, FY2013 was the first year the entire allowable adjustment for disaster relief was used for a single account.

Analysis and Potential Policy Implications

A number of policy questions are before Congress as the country recovers from its first large-scale disasters with the BCA in effect. These include:

- time frames for congressional action after a large-scale disaster strikes;
- the implications of the rising number of Stafford Act declarations;
- funding disaster relief efforts in severe disaster years;
- offsetting the cost of disaster relief;
- calculating the allowable adjustment for disaster relief;
- the inclusiveness of all types of disaster assistance in OMB's methodology for calculating the 10-year average on disaster relief spending; and
- the possible implications of excluding Stafford Act assistance for emergencies and fires from the allowable adjustment calculation.

Timeframes for Congressional Action

As demonstrated in **Table 1**, prior to the enactment of the BCA, Congress generally responded to the needs of disaster victims by appropriating additional funds for disaster relief in a matter of days as with the September 11th terrorist attacks and Hurricane Katrina, with some exceptions.[34]

Table 1. Selected Examples Supplemental Funding for Large-Scale Disasters

Event	Date of Declaration	Date of Request	Date of Enactment	Days from Incident to Enactment
Hurricane Sandy	October 30, 2012	December 7, 2012	January 29, 2013	91
Hurricane Katrina	August 29, 2005	September 1, 2005	September 2, 2005	3
Hurricane Isabel	September 18, 2003		September 30, 2003	12

DRF funding has traditionally been the driver of most disaster supplementals, the $11.5 billion for the DRF barely exceeded the $11 billion for DOT and was far less than the $16 billion provided to HUD's Community Development Block Grant Program.

[33] The majority of the supplemental funding in P.L. 113-2 was designated as emergency funding. $5.4 billion for the DRF was designated as disaster relief, and $3.5 billion for Army Corps of Engineers construction activities counted against the discretionary budget caps. $41.6 billion to address both the immediate losses and damages caused by Hurricane Sandy were designated as emergency funding. For more information on supplemental funding for Hurricane Sandy see CRS Report R42869, *FY2013 Supplemental Funding for Disaster Relief*, coordinated by William L. Painter and Jared T. Brown, and CRS Report R43665, *Supplemental Appropriations for Disaster Assistance: Summary Data and Analysis*, by Bruce R. Lindsay and Justin Murray.

[34] For example, the Nisqually earthquake supplemental was driven, in large part, by the impact of Tropical Storm Alison on the Gulf Coast in June of 2001. That supplemental is emblematic of some supplemental vehicles that were the result of multiple disaster declarations.

Event	Date of Declaration	Date of Request	Date of Enactment	Days from Incident to Enactment
9/11 Terrorist Attacks	September 11, 2001	September 12, 2001	September 18, 2001	7
Nisqually Earthquake	March 1, 2001		July 24, 2001	114
Hurricane Floyd	September 16, 1999	September 21, 1999	October 20, 1999	34
Northridge Earthquake	January 17, 1994		February 12, 1994	26
Midwest Floods*	June 11, 1993	July 14, 1993	August 12, 1993	62
Hurricane Andrew	August 23, 1992	September 8, 1992	September 23, 1992	31
Hurricane Hugo	September 20, 1989		September, 29, 1989	9

Source: CRS Report R40708, *Disaster Relief Funding and Supplemental Appropriations for Disaster Relief*, by Bruce R. Lindsay and Justin Murray.

Note: The rightmost column reflects the number of days it took to enact the first supplemental appropriation after the incident was declared a major disaster. Some incidents (such as Hurricane Katrina) received more than one administration request for increased funding, as well as more than one supplemental appropriation for disaster relief. A supplemental request date for Hurricanes Isabel and Hugo, as well as the Nisqually and Northridge Earthquakes, could not be identified.

The timeline for Hurricane Sandy, the first catastrophic disaster under the BCA structure, was markedly different than in years past.

In the case of Hurricane Sandy, the DRF had a relatively high balance when the disaster occurred compared to previous years. The high balance can be attributed to the combination of the BCA mechanism, which had been used to replenish a nearly-depleted DRF in FY2012, and a CR that based interim funding for the DRF on that replenishment. This decreased the urgency to enact legislation to provide additional resources to the DRF. With the DRF able to fund the immediate needs in the wake of the storm, the Administration and Congress took additional time to assess how other relief funds should be targeted through the supplemental appropriations bill. This is in contrast to Hurricane Katrina, where a large supplemental appropriation was initially provided to FEMA and was rescinded and redistributed to other programs as needs became clearer.

Potential Implications of the Rising Number of Stafford Act Declarations

Since FEMA's first full year of operations (1979) there has been a steady increase in the number of emergency and major disaster declarations.[35] It is unclear what is causing the increase. On the one hand, it could be the result of more incidents. On the other hand, it could be the result of an increase in incidents for which a request for assistance is made (in other words, there is no increase in the number of incidents; rather, there is an increase in requests for federal assistance). The result could also be caused by a combination of the two, as well as by some other undetermined cause. However, while the number of declarations is often a focus for criticism, it is the costs within the declared events (determinations on eligible disaster spending) that can drive the higher disaster spending amounts.

[35] For more information on declaration trends see CRS Report R42702, *Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress*, by Bruce R. Lindsay and Francis X. McCarthy.

The BCA does not provide a means for limiting or reducing federal expenditures on disaster assistance. If declarations continue to increase unabated, Congress may be asked to approve increasingly larger amounts for disaster assistance. Some might argue that in addition to the structure used by the BCA, other policies designed to reduce federal expenditures for assistance should also be pursued. These policy options might include strengthening declaration criteria, reducing the federal cost-share for incidents, and creating incentives that would encourage states to pursue more robust preparedness and mitigation measures.[36]

Funding Relief Efforts in Severe Disaster Years Going Forward

Congress provided additional budget authority for disaster assistance in 10 appropriation laws since the hurricanes of 2005. While OMB removed the $37 billion spent on disaster relief in 2005 as an outlier when calculating the allowable adjustment for disaster relief to the cap, response and recovery to these storms went well beyond that first year. Appropriations for recovery from these storms between FY2006 and FY2010 were still substantial—$32 billion was spent in FY2006, in great part because of those ongoing recovery efforts.

The sizeable initial disaster relief expenditures for Hurricane Katrina and the other 2005 storms will begin to lose relevance in calculating the allowable adjustment for disaster assistance for FY2016, and will no longer impact calculations for the allowable adjustment in FY2017.[37] Once FY2005 and FY2006 rotate out, there will be a corresponding drop in the allowable disaster assistance adjustments. The reduction in the allowable adjustment will be more significant if disaster spending is below the 10-year average in the intervening years. In a scenario where disaster spending stays at the 10-year average level, the allowable adjustment will fall by $2.2 billion from FY2015 to FY2016, and then by another $2.9 billion from FY2016 to FY2017—a reduction of 41% in two years. Moreover, as the Administration and Congress work to spend under the adjustment, the allowable adjustment could continue to decrease, increasing the likelihood that it would be inadequate to accommodate future catastrophic disaster needs.

Prior to Hurricane Sandy, there were at least four possible outcomes to meeting disaster assistance demands beyond the allowable adjustment for disaster relief:

1. Designation of disaster assistance as emergency funding,
2. Congress appropriating additional disaster relief budget authority.
3. Renegotiation of the underlying budget control laws, or
4. Making discretionary spending cuts, either specific program cuts or through across-the-board means, to offset the cost of additional assistance.

In the wake of Hurricane Sandy, the Administration submitted a request to Congress for more than $60 billion in relief, well in excess of the available allowable adjustment. At the time Congress was confronted with a significant fiscal challenge, with a sequestration under the BCA already looming, as well as expiration of multiple tax cuts—a combination colloquially known as "the fiscal cliff." The Administration (and ultimately Congress) chose to pursue the first option, designating the additional assistance as emergency funding without offsets, citing legislative authority and historical precedent. There was no public legislative initiative to provide additional

[36] For further analysis on emergency and major disaster declarations see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Francis X. McCarthy. For further analysis on FEMA cost-shares see CRS Report R41101, *FEMA Disaster Cost-Shares: Evolution and Analysis*, by Francis X. McCarthy.

[37] For details on the amount of assistance provided to the Gulf Coast after the 2005 and 2008 hurricane season, see CRS Report R43139, *Federal Disaster Assistance after Hurricanes Katrina, Rita, Wilma, Gustav, and Ike*, coordinated by Bruce R. Lindsay and Jared C. Nagel.

revenue to pay for disaster assistance. Renegotiation of the underlying budget laws was limited to measures delaying sequestration, rather than altering the allowable adjustment for disaster assistance.

Offsetting the Cost of Disaster Relief

Over the years Congress has debated the use of "offsets" to "pay for" all or part of legislation. In the context of appropriations debate, to offset means using policy changes, additional revenue, spending cuts, or rescissions of previous appropriations to pay for all or part of legislation. Congress uses the Congressional Budget Office, which provides budgetary "scoring," to evaluate the costs of legislation and the value of any offsets.

Some examples include amendments that were offered in both the House and the Senate to offset the cost of the Disaster Relief Appropriations Act—including the funding for the DRF. H.Amdt. 4 (which would have offset $17 billion in the immediate disaster assistance with an across-the-board cut in discretionary spending) was not agreed to by a vote of 162-258.[38] S.Amdt. 4 (which would have offset the entire $51 billion in disaster assistance) was not agreed to by a vote of 35-62.[39]

In the fall of 2011, there was also extensive public debate over the possible requirement of offsets for disaster assistance.[40] Those opposed to the use of offsets argue that their use could politicize disaster assistance by allowing policymakers to target certain programs for the needed spending reduction. Opponents have also argued that assistance to disaster victims could be delayed while Congress debates the issue; and that emergency funding for other endeavors, such as war funding, has not faced the same requirement.

Those in favor of offsetting disaster assistance argue that offsets do not deny disaster victims aid; they merely provide a way of doing so without increasing the deficit. Proponents also argue that the concern over delayed disaster assistance is without merit. Efforts were made to reduce the size of the FY2013 disaster supplemental, as well as to remove emergency funding designations for mitigation programs, to ensure that such funding would count against the BCA's discretionary spending limits. Supporters argued that additional funds could be provided later in the process.[41] Opponents of that approach argued that the supplemental funds were important for morale and the confidence of states and local communities that they would receive help in initiating their recovery.

Across-the-board cuts may seem more appealing to some Members rather than finding specific offsets for disaster assistance. Although the net accounting effect is the same over the medium term, across-the-board cuts do not require a specific congressional action that may provoke allies of (and stakeholders in) a given program. The potential risks incurred by an across-the-board rescission regardless of the possible effect on national priorities should not be discounted, however, especially when one considers that a full offset for the Disaster Relief Appropriations Act would have been over $50 billion—almost 140% of the size of the sequestration applied under the BCA to the non-defense budget in March 2013.

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[38] P.L. 113-2 provided supplemental funding for Hurricane Sandy. Vote information can be located at: *Congressional Record, Daily Digest*, Roll No. 14, January 15, 2013, p. H126.

[39] *Congressional Record, Daily Digest*, Rollcall Vote No. 3, January 28, 2013, p. S322.

[40] For more information on the use of offsets for disaster assistance see CRS Report R42458, *Offsets, Supplemental Appropriations, and the Disaster Relief Fund: FY1990-FY2013*, by William L. Painter.

[41] Anne L. Kim and Kerry Young, "Senate Democrats Apply Pressure as GOP Pushes for Storm Aid Amendments," CQ News, December 20, 2012.

Calculating the Disaster Relief Allowable Adjustment

Expenditures Omitted from the 10-Year Average

As previously mentioned, under the BCA, future spending caps on disaster relief and OMB's methodology for calculating the allowable adjustment are based on Section 102(2) of the Stafford Act. As a result of OMB's interpretation of the definition, when OMB reviewed appropriations for inclusion in the "disaster relief" calculation, if the Stafford Act was not explicitly cited those amounts were omitted—even when the funding was clearly for response to incidents declared as major disasters (see OMB quotations below). In some cases the legislative text included "pursuant to the Stafford Act." In other cases this specific language was omitted. It is not likely that precision in the language contemplated that the wording would one day be the basis of a calculation of disaster spending.

OMB's review resulted in this construction: when the legislative text stated the funding was pursuant to the Stafford Act, OMB included that amount in the 10-year average. On the other hand, when the legislative text made no reference to the Stafford Act—whether it referred to the declared incident or not—OMB did not include that amount in the 10-year average. OMB illustrated such omissions in the Report's methodological description. According to OMB:

> ... in determining the amount that was "provided for disaster relief" in fiscal year 2005, OMB included in the calculation the funding that the Congress appropriated ... to the Department of Education "Hurricane Education Recovery" account for "assisting in meeting the educational needs of individuals affected by hurricanes in the Gulf of Mexico" because the appropriations language specified that it was "for students attending institutions … located in an area in which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act."[42]

The OMB Report further states:

> OMB did not include in its calculations those amounts ... Congress appropriated in response to a presidentially-declared major disaster when such amounts were not specifically designated in statute to carry out activities pursuant to the Stafford Act and the Act itself was not specifically referenced. For example, OMB did not include in its calculations for fiscal year 2009 the appropriations ... Congress provided in December 2009 to the Department of Education "Innovation and Improvement" account "for competitive awards to local educational agencies located in counties in Louisiana, Mississippi, and Texas that were designated by ... [FEMA] as counties eligible for individual assistance due to damage caused by Hurricanes Katrina, Ike, or Gustav" because the amounts were not specified as being for activities undertaken pursuant to a major disaster declaration under the Stafford Act and the [Stafford] Act was not specifically referenced.[43]

OMB took this position despite the fact that it has not always been the practice to include a specific reference to the Stafford Act in supplemental appropriations for assistance in response to major disasters. An example of past practice is presented below.

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[42] Office of Management and Budget, OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate, September 1, 2011, p. 2, at http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/disaster_relief_report_sept2011.pdf.

[43] Ibid., p. 2.

Pre-BCA Disaster Assistance Spending

In the Disaster Relief and Recovery Supplemental Appropriations Act, 2008,[44] Title I, Chapter 1 outlines relief funds provided through the Department of Agriculture, including the following provisions (emphasis added):

> NATURAL RESOURCES CONSERVATION SERVICE
>
> EMERGENCY WATERSHED PROGRAM
>
> For an additional amount for the "Emergency Watershed Protection Program", $100,000,000, to remain available until expended, for disaster recovery operations.
>
> FARM SERVICE AGENCY
>
> EMERGENCY CONSERVATION PROGRAM
>
> For an additional amount for "Emergency Conservation Program", $115,000,000, to remain available until expended.
>
> RURAL DEVELOPMENT PROGRAMS
>
> RURAL DEVELOPMENT DISASTER ASSISTANCE FUND
>
> **For grants, and for the cost of direct and guaranteed loans, for authorized activities of agencies of the Rural Development Mission Area, $150,000,000, to remain available until expended, which shall be allocated as follows: $59,000,000 for single and multi-family housing activities; $40,000,000 for community facilities activities; $26,000,000 for utilities activities; and $25,000,000 for business activities: Provided, That such funds shall be for areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974**: Provided further, That the cost of such direct and guaranteed loans, including the cost of modifying loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That the Secretary of Agriculture may reallocate funds made available in this paragraph among the 4 specified activities, if the Secretary notifies the Committees on Appropriations of the House of Representatives and the Senate not less than 15 days prior to such reallocation.
>
> In addition, for an additional amount for grants, and for the cost of direct and guaranteed loans, for authorized activities of the Rural Housing Service, $38,000,000, to remain available until expended, for single and multi-family housing activities: Provided, That such funds shall be for areas affected by Hurricanes Katrina and Rita: Provided further, That the cost of such direct and guaranteed loans, including the cost of modifying loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

Of all the appropriations listed, only the provisions in bold would be counted by OMB for purposes of calculating the cap on the adjustment for disaster relief as defined under the Budget Control Act. Only the Rural Development Disaster Assistance Fund appropriation specifically noting the declaration of a major disaster under the Stafford Act meets the standard described in OMB's report. The other provisions, mentioning the storms that were the root cause of the declaration, or the intent that the funds be for "disaster recovery" would likely not be adequate to meet the OMB methodology for accounting for disaster relief spending.

[44] Division B of 122 Stat. 3585 *et seq*.

Disaster Relief Spending Under the BCA

In the "minibus" legislation, P.L. 112-55, provisions providing disaster relief under some of these same accounts were written as follows (emphasis added):

> Section 735. There is hereby appropriated for the 'Emergency Conservation Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $122,700,000, to remain available until expended: Provided, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That there is hereby appropriated for the 'Emergency Forest Restoration Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $28,400,000, to remain available until expended: Provided further, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That there is hereby appropriated for the 'Emergency Watershed Protection Program', for necessary expenses resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $215,900,000, to remain available until expended: **Provided further, That the preceding amount is designated by the Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985.**

All of this funding would be considered by OMB as disaster relief due to the citations of major disasters under the Stafford Act, as well as the specific proviso in bold declaring congressional intent that it be categorized as such.

It could be argued that a more precise 10-year average of disaster assistance would include all spending for major disasters regardless of whether the legislative text referred to the Stafford Act. As we saw above, not all immediate assistance for Hurricane Katrina—which was declared a major disaster on August 29, 2005—was captured in making calculations for the disaster relief allowable adjustment. Furthermore, large incidents like Katrina often receive assistance from the federal government years after the incident—the appropriations impact the budget for disaster assistance as large infrastructure and mitigation projects are completed and reimbursed, yet because this funding was appropriated without direct reference to a Stafford Act declaration, it is not factored into the calculation for disaster relief.

There are at least two changes that could be made that would help ensure a more accurate calculation of the 10-year average spent on disaster relief for use as a cap adjustment under the BCA.

First, Congress could opt to provide the Stafford Act designation in all future appropriations legislation. That appears to be the new practice. However, it is useful to note that at the time of appropriation to some accounts, it is not clear if funding will pay for costs associated to a major disaster. For example, Department A has a mission-critical facility destroyed by a tornado, and uses current-year funding to restore operations. The appropriation does not signal that disaster cost, and therefore it may not be captured in future calculations.

Second, Congress could amend the BCA to require that OMB recalculate "disaster relief" amounts based on a broader methodology. In the example above, an appropriation to pay for the cost of restoring operations might not be eligible to be called disaster relief if the tornado was not designated as a major disaster.

Both of these changes would likely result in a higher, and arguably more accurate yearly total of disaster relief, and a larger allowable adjustment for disaster relief under the BCA than under current practices, if the underlying calculation of the allowable adjustment was not changed.

Other Types of Excluded Stafford Assistance

The BCA excludes other types of assistance provided under the Stafford Act. These are emergency declarations provided under Section 102(1) and FMAGs provided under Section 420(a).[45] Emergency declarations authorize activities that can help states and communities carry out essential services during emergency situations.[46] Emergencies can also be declared prior to an incident, at the request of the governor, to save lives and prevent loss.[47] For example, emergency declarations have been declared prior to a hurricane making landfall to help state and local governments take necessary measures (evacuation assistance, placement of response resources, etc.).[48] Unlike major disasters, the President does have the authority to declare an emergency without a governor's request when the incident involves a subject area where the "Federal government exercises exclusive or primary responsibility and authority."[49]

Compared to major disaster declarations, emergency declarations are generally considered a minor expense (congressional notification is required when spending for an emergency exceeds $5 million); however, numerous declarations can be declared in a year and, like major disasters, they are funded through the DRF. In 2005, 68 emergency declarations were declared, 50 of which were for each individual state to help relocate Hurricane Katrina victims who were displaced by the storm. In addition, since Hurricane Katrina, the federal government has increased its efforts to pre-position resources before a hurricane makes landfall. If this trend continues, the cost associated with emergency declarations may increase due to the more comprehensive preparations.

This means that the spending levels on disaster relief from the DRF used in OMB's accounting are less than the total amount expended from the DRF in the years reported. This difference may include the omission of expenditures for emergency declarations and FMAG declarations.[50]

FMAG declarations include equipment, personnel, and supplies to states and localities for the mitigation, management, and control of fires that threaten to become a major disaster.[51] As with emergency declarations, FMAGs are relatively modest in cost when compared to major disaster declarations. A review of FEMA obligations data indicate that the highest amount provided in FMAG declarations was in 2007, when roughly $112 million was obligated for fire assistance.[52]

Because emergency declarations and FMAGs derive funding from the DRF, it could be argued that excluding them from the ten-year average calculation for disaster relief generates an artificially low result. It could be further argued that including emergency and fire declarations

[45] For more information on Fire Management Assistance Grants see CRS Report R43738, *Fire Management Assistance Grants: Frequently Asked Questions*, coordinated by Bruce R. Lindsay.

[46] For example, food, sheltering and medical care.

[47] For example, evacuations and setting up shelters.

[48] Recent examples of pre-event declarations include emergency declarations prior to Hurricanes Katrina, Rita, and Gustav making landfall (emergency declarations 3212, 3260, and 3290 respectively).

[49] 44 C.F.R. 206.35(d). This category would likely include acts of terrorism.

[50] OMB did not respond to CRS inquiries about the details of its methodology.

[51] 42 U.S.C. 5187.

[52] DHS/FEMA, Calendar Year Summary of Obligations, 1988-2010.

would more accurately forecast federal disaster expenses.[53] Although it is likely that including all federal assistance for emergency and disaster relief would increase the ten-year average, the size of the increase would depend on the new methodology used to calculate the amount of assistance provided.

Concluding Observations

Enactment of the BCA resulted in several key changes in the way disaster assistance is funded. The structure of the appropriation for the DRF has changed to reflect the availability of resources that do not count against the allocation for annual appropriations, allowing for prefunding of disaster needs. This in turn has led to a more deliberate development of a supplemental appropriation in the face of a major disaster with abnormally high cost and broad scope.

The bulk of the debate over the impact of disaster relief on the federal budget tends to occur in moments of crisis, such as in the past when the DRF was on the brink of depletion, or when a major incident like Hurricane Katrina or Sandy seems ready to overwhelm the budgetary structures in place. It is difficult to assemble a clear picture of the issue on such a short time frame in the wake of a major disaster.

In FY2013, the federal response to Hurricane Sandy led to a certain legislative response in the shape of supplemental appropriations and reforms to the Stafford Act. To some, the legislative intent of the BCA was to eliminate or reduce the use of the emergency designations to pay for disaster assistance by creating the disaster relief designation. They argue that in the case of assistance for Hurricane Sandy, Congress circumvented the use of offsets by designating the incident as an emergency.[54] Opponents of the use of emergency designations for disaster assistance may conclude that while the BCA may have helped budget the DRF at more sustainable levels, disaster assistance for larger incidents should be offset to lessen their budgetary impact. Proponents, on the other hand, might argue that emergency designations are still needed for larger, arguably catastrophic incidents.

Now that some time has passed since the BCA, Congress may choose to consider whether its mechanisms have produced the intended result more broadly, or in the specific area of disaster relief. Exploring the actual costs of governmental assistance in the wake of floods, fires, explosions, and storms, and understanding how the local, state, and federal governments fund those relief efforts is a valuable first step. A more accurate accounting for the size of that burden and how it is shared across the levels of government would appear to be essential.

The funding and budget control functions do not operate in a vacuum, however. Controlling disaster costs cannot be done without addressing the laws that establish the role of the federal government in disaster response and recovery, and the expectations of state and local governments and the American people.

[53] Recent years have seen increasing wildfire activity. FY2011 was the highest number of FMAG declarations with 114. Over the past two years there have been 77 such actions. Source: http://www.fema.gov./disasters/grid/year.

[54] Patrick Louis Knudsen, *Courting Disaster: Two Gaping Loopholes in the Debt Deal That Will Drive Up Spending*, The Heritage Foundation, November 7, 2012, at http://www.heritage.org/research/reports/2013/01/hurricane-sandy-relief-bill-and-bloated-deficit-spending.

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