



# FEMA's Pre-Disaster Mitigation Program: Overview and Issues

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## Summary

Pre-Disaster Mitigation (PDM), as federal law and a program activity, began in 1997. Congress established a pilot program, which FEMA named “Project Impact,” to test the concept of investing prior to disasters to reduce the vulnerability of communities to future disasters. P.L. 106-390, the Disaster Mitigation Act of 2000, authorized the PDM program in law as Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

From its beginnings as “Project Impact” to its current state, the PDM program has grown in its level of appropriated resources and the scope of participation nationwide. Along with that growth have come issues for Congressional consideration, including the approach for awarding grant funds, the eligibility of certain applicants, the eligibility of certain projects, the degree of commitment by state and local governments, and related questions.

Authorization for the PDM program expires on September 30, 2009. In the 111<sup>th</sup> Congress, Representative Oberstar and other sponsors introduced H.R. 1746 to re-authorize the program for an additional three years at \$250 million per year and to remove the sunset provision. The bill would also increase the minimum amount each state can receive from \$500,000 to \$575,000. H.R. 1746 includes provisions that have been part of appropriations statutes that award funds both through a formula (with, as noted, a minimum amount available per state) as well as a competitive process for the majority of the funds. H.R. 1746 was approved by the Transportation and Infrastructure Committee on April 2 and was approved by the House under suspension of the rules on April 27, 2009. It is notable that the Administration’s budget for FY2010 requests that the competitive process be dropped in favor of a risk-based assessment by FEMA. Congress may wish to hear more regarding the risk-based allocation formula before enacting the authorizing legislation for the coming years.

In another major development in FY2008, Congress directed 95 grants to 28 states, which totaled close to 44% of all PDM funds (P.L. 110-161, Consolidated Appropriations Act, 2008). These were the first such earmarks for the PDM program. While some of the projects meet PDM eligibility standards, others may be considered emergency preparedness projects which are not eligible for grants, as defined by the Stafford Act and the PDM guidance. For FY2009, the Congress directed 51 grants to 27 states at a program cost of just under \$25 million. The FY2010 DHS Appropriations measure currently has a funding level of \$100 million proposed with just less than \$25 million for Congressionally directed projects. The listing of directed grants for the last two fiscal years provides information on jurisdictions but does not have details on the types of projects involved. In consideration of the FY2010 appropriations, amendments were offered in the House and Senate to curtail the earmarking of PDM funds.

This report will be updated as warranted by events.

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# Overview of Pre-Disaster Mitigation

## Program Purposes

The purpose of the original pre-disaster hazard mitigation pilot program, known as “Project Impact,” as well as the successor Pre-Disaster Mitigation (PDM) program, has been to implement hazard reduction measures prior to a disaster event. Those measures are similar to those actions taken following a disaster under the authority of the Section 404 Hazard Mitigation Grant Program (HMGP).<sup>1</sup> The range of eligible projects might include retrofitting public buildings against hurricane-force winds or seismic damage, acquiring and relocating properties out of a flood plain, elevating structures in a flood plain, flood-proofing public buildings, vegetation management to mitigate against wildfires, or constructing or converting public spaces into “safe rooms” in tornado-prone areas.

While there would appear to be general agreement among analysts and practitioners on successful mitigation measures, there is continuing debate on where the line is drawn between preparedness for response to the next disaster and mitigation measures to lessen its impact. A common distinction frequently drawn is between structural and non-structural mitigation. Structural mitigation is the building of levees to protect communities from flooding, such as those constructed by the U.S. Army Corps of Engineers. A non-structural mitigation project would be to establish new land use patterns, and possibly remove structures from a flood plain that has repeatedly experienced flood damage. The essential difference is that the structural projects tend to construct barriers to protect communities, while non-structural projects remove structures and citizens from harm’s way. The removal of homes from a flood plain is an example of the type of project eligible under HMGP and PDM.

## Context and Trends

When Congress first appropriated funds in FY1997 for mitigation activities before disasters occur, FEMA established the pilot program and called it “Project Impact.” The communities participating in the initial pilot program were selected by FEMA based on factors such as their experience with natural disasters, the ongoing risk the community faced, and the degree of collaboration among local, county and state officials. Project Impact placed most of its emphasis on community efforts to mitigate those hazards that made the community vulnerable to future damage.

This emphasis on community-based efforts included the required commitment of the local governments, non-governmental organizations, the local business community, as well as the development of an educational component for community awareness. This approach grew out of experience which demonstrated the necessity of community “buy-in” and active involvement with mitigation activities.

The study of elite attitudes and opinions with respect to disaster mitigation policies demonstrates the relatively low priority placed on natural hazards as political issues in local

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<sup>1</sup> 42 U.S.C. 5170(c). For additional information on HMGP, see CRS Report R40471, *FEMA’s Hazard Mitigation Grant Program: Overview and Issues*, by Natalie Keegan.

communities and even at the state level. It further demonstrates the relative unpopularity of nonstructural mitigation measures as compared to structural solutions to disaster problems or to traditional relief and rehabilitation policies.<sup>2</sup>

While noting the reported reticence toward nonstructural mitigation, some in the field were also turning a critical eye toward structural mitigation as a panacea for the risks posed by natural hazards. One observer spoke to the gaps in the policy area as follows:

Structural mitigations, for example, encourage people to move into hazardous areas. Post-disaster relief tends to socialize risks, lets people be insensitive to hazard risk when they build structures, and so forth. The current emphasis on nonstructural or land use approaches reflects a concern that previous policy emphases may well have increased, rather than decreased, the level of population at risk from hazards.<sup>3</sup>

The concept of disaster mitigation had been favorably discussed for several decades among some in the emergency management field. But absent serious disaster damage during most of the 1980s, it was difficult to advance the concept. As one observer explained:

With the comparative absence of major disasters during the Reagan years, priorities shifted and commitment to proactive measures requiring time and money waned. But in the early 1990's, that attitude dramatically changed. Massive losses between 1989 and 1993 from five major hurricanes, earthquakes, and river floods resulted in mitigation making more sense to more people than at any time previously.<sup>4</sup>

As noted above, the relative quiescence of the Reagan years from an emergency management perspective was followed by years with disasters of great scale in both human costs and financial damages. The disasters included Hurricane Hugo (1989); the Loma Prieta earthquake (1989); Hurricane Andrew (1992); the 1993 Midwest floods; the Northridge, California earthquake (1994); and Hurricanes Fran and Floyd (1996 and 1999) along the eastern coast of the nation. The confluence of these events helped to support those in favor of proactive work to lessen the impact of disasters, but little organized research had been done up to that point to demonstrate the benefits of pre-disaster mitigation. Without such studies (later mandated by the Disaster Mitigation Act of 2000 - DMA2K<sup>5</sup>), Congress approached the PDM concept cautiously and provided funding at lower levels until the benefits of such a program were proven.

## PDM Legislative and Appropriations History

Pre-disaster hazard mitigation activities were initially funded through a pilot program first provided for in the conference report that accompanied the 1997 appropriations legislation. The pertinent report language follows:

The conferees agree to up to \$2,000,000 for FEMA's participation in appropriate pre-disaster mitigation efforts. The conferees agree with FEMA's Director that mitigation activities can

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<sup>2</sup> James D. Wright and Peter H. Rossi, ed. *Social Science & Natural Hazards*, (Cambridge: Abt Books, 1981), p. 78.

<sup>3</sup> Ibid. p. 82.

<sup>4</sup> Robert E. Hinshaw, *Living with Nature's Extreme's: The Life of Gilbert Fowler White*, (Boulder: Johnson Books, 2006), p. 181.

<sup>5</sup> P.L. 106-390, Sec. 209, 114 Stat. 1571.

ultimately save significant sums from post-disaster clean-up and response actions and that the Agency should be taking an increasingly active role in developing and participating in pre-disaster mitigation programs. Such programs range in scope from the development and/or funding of mitigation plans for communities to participation with industries, insurers, building code officials, government agencies, engineers, researchers and others in developing systems and facilities to test structures in disaster-like circumstances. The conferees understand that these activities will require an infusion of considerable up-front financial support as well as the possible movement over time of disaster relief funds to pre-disaster programs, and the Agency is expected to use up to the \$2,000,000 provided herein in an appropriate manner to begin the process of movement toward a meaningful pre-disaster mitigation program. Expenditure of these funds may not, however, be made until submission to the Committees on Appropriations of an appropriate pre-disaster mitigation spending plan.<sup>6</sup>

Subsequent appropriations measures for fiscal years 1998, 1999, 2000, and 2001 provided \$30 million for 1998 and \$25 million per year for the next three years.<sup>7</sup> Following four years of funding through appropriations statutes, Congress authorized the program from 2000 to 2003 in the Disaster Mitigation Act of 2000 (DMA2K) which placed the PDM program in the Robert T. Stafford Disaster Relief and Emergency Assistance Act as Section 203.<sup>8</sup>

Originally, in its FY2003 and FY2004 budget requests, the Bush Administration proposed consolidating all mitigation funds in the PDM program. "Adoption of this proposal would have terminated funding provided through the Hazard Mitigation Grant Program after a major disaster is declared."<sup>9</sup> Congress did not wish to entirely eliminate the post-disaster mitigation help but did devote more resources to the pre-disaster program. In order to shift the resource balance between post-disaster mitigation and pre-disaster mitigation, Congress reduced the HMGP amount in the Stafford Act for post-disaster work from 15% of the total amount spent on the disaster (less administrative costs) to 7.5%.<sup>10</sup> While the post-disaster mitigation pot would shrink, the PDM program would grow. However, this shifting of resources would be short lived.

Over its dozen year history, the funding levels for PDM have risen and fallen and risen again. During this time the program also was given its own separate line item account within the DHS/FEMA budget. The changes in the funding levels represented differing approaches not only to PDM but to the mitigation concept as a whole. The 111<sup>th</sup> Congress has introduced legislation (H.R. 1746) that would stabilize funding by authorizing the appropriation of \$250 million each fiscal year for 2010, 2011, and 2012.<sup>11</sup> The proposed legislation would also remove the sunset provision, though authorization for funding after FY2012 is undetermined.

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<sup>6</sup> U.S. Congress, Conference Committee, *Making Appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for Sundry Independent Agencies, Boards, Commissions, Corporations, and Offices for the Fiscal Year Ending September 30, 1997, and for Other Purposes*, conference report to accompany H.R. 3666 (P.L. 104-204), 104<sup>th</sup> Cong. 2<sup>nd</sup> Sess., H.Rept. 104-812 (Washington; GPO, 1996).

<sup>7</sup> P.L. 105-65, 111 Stat. 1376; P.L. 106-390, 112 Stat. 501; P.L. 106-74, 113 Stat. 1086; and P.L. 106-377, 114 Stat. 1441A-46.

<sup>8</sup> 42 U.S.C. 5133.

<sup>9</sup> For additional information see, archived CRS Report RL32242, *Emergency Management Funding for the Department of Homeland Security: Information and Issues for FY2005*, by Keith Bea, Shawn Reese, Wayne Morrissey, Frank Gottron, and C. Stephen Redhead, p. 30.

<sup>10</sup> P.L. 108-7, Sec. 417, 117 Stat. 525.

<sup>11</sup> H.R. 1746

**Table I. History of Pre-Disaster Mitigation (PDM) Appropriations, FY1997 to FY2008**

Fiscal Year	Program	Amount Requested (in millions)	Appropriations (in millions)
1997	Project Impact	N/A	\$2 EMPA account <sup>a</sup>
1998	Project Impact	\$50	\$30 EMPA account
1999	Project Impact	\$50	\$25 EMPA account
2000	Project Impact	\$30	\$25 EMPA account
2001	Project Impact	\$30	\$25 EMPA account
2002	Project Impact	\$0	\$25 EMPA account
2003	PDM	\$300	\$150 PDM Fund established <sup>b</sup>
2004	PDM	\$300	\$150 PDM Fund
2005	PDM	\$150	\$100 PDM Fund <sup>c</sup>
2006	PDM	\$150	\$50 PDM Fund
2007	PDM	\$100	\$100 PDM Fund
2008	PDM	\$75	\$114 PDM Fund
2009	PDM	\$75	\$90 PDM Fund
2010	PDM	\$150	Pending

**Source:** FEMA, Mitigation Directorate, June 2010.

- a. EMPA is the Emergency Management and Planning Assistance (EMPA) account, which is FEMA's general administrative account.
- b. The separate PDM account creates a separate line item for PDM for the first time in the FEMA budget.
- c. For the first time in legislative language P.L. 108-334 directed that the PDM funds "shall be awarded on a competitive basis."

The original "Project Impact," the first PDM program, was closely identified with then FEMA Director James Lee Witt. Witt was appointed by President Clinton in 1993 and gained a high profile in the course of leading FEMA's disaster response and recovery efforts. Witt described "Project Impact" as "a program designed to break the damage-repair, damage-repair cycle and instead help communities become disaster resistant."<sup>12</sup>

While the initial funding amounts were relatively small for a national program, Project Impact was generally considered a success. One author observed, for example, that "the money was said to have worked wonders."<sup>13</sup> However, some observers maintained that if funding were provided through a competitive process the criteria could recognize areas with the greatest risk and where mitigation measures could produce the most beneficial results, rather than areas that may have experienced random disasters but did not necessarily face as grave an ongoing threat.

<sup>12</sup> James Lee Witt and James Morgan, *Stronger in the Broken Places*, (New York: Times Books-Henry Holt and Company, 2002), p. 42.

<sup>13</sup> Robert Block and Christopher Cooper, *Disaster: Hurricane Katrina and the Failure of Homeland Security*, (New York: Times Books-Henry Holt and Company, 2006), p.68.

Early in the George W. Bush Administration, “Project Impact” was eliminated from the FY2002 budget on the same day that the Mayor of Seattle was praising the program for preventing further damage due to the Nisqually earthquake.<sup>14</sup>

When the PDM authorizing legislation (DMA2K) was passed, Congress addressed some of the same themes used in “Project Impact” but placed the responsibility on the Governor of each state to suggest up to five communities to be considered for pre-disaster mitigation assistance.<sup>15</sup> While the Governor nominated potential grantees, FEMA made the final selections. In addition, under the statute, FEMA had the discretion under “extraordinary circumstances” to award a grant to a local government that had not been recommended by a Governor.<sup>16</sup>

In 2002 FEMA had decided to re-brand “Project Impact” the Pre-Disaster Mitigation (PDM) program. While this title conformed to the legislative language it also was intended to send another message as then FEMA Director Joe M. Allbaugh explained:

I want to take the “concept” of Project Impact and fold it in to the program of mitigation. Project Impact is not mitigation. It is an initiative to get “consumer buy-in.” In many communities it became the catch-phrase to get local leaders together to look at ways to do mitigation.<sup>17</sup>

For FY2003 and FY2004, Congress increased funding for pre-disaster mitigation to \$150 million from the previous \$25 million level. Also, Congress had inserted legislative language in the FY2003 Appropriations Act, which became law on February 20, 2003, stating that PDM funds “shall be awarded on a competitive basis.”<sup>18</sup> FEMA conformed to the direction from Congress and made part of PDM a competitive grant program thereafter.<sup>19</sup>

While the authorization of PDM in FY2000 had recognized, at a minimum, the potential benefit of mitigation prior to disaster events, the substantial funding increase beginning in FY2003 was one component of a different overall approach. This new approach was targeted not only to pre-disaster mitigation but to mitigation in general. It represented a shift in thinking regarding the most appropriate time to devote resources to mitigation in disaster-prone communities.

Some had suggested that the Hazard Mitigation Grant Program (HMGP) in the Stafford Act (Section 404), which provides funding to a state following a major disaster to mitigate future disaster damage, was taking the wrong approach, or, more precisely, was in the wrong sequence. Since the funds arrive after the disaster event, and are only available to states that have suffered the impact of a disaster, they cannot be targeted at areas that might have a greater risk of a more costly disaster that has not yet occurred. Pre-disaster mitigation, they argued, would be more effective.

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<sup>14</sup> Ibid.

<sup>15</sup> 42 U.S.C. 5133(d).

<sup>16</sup> 42 U.S.C. 5133(d)(2)(B).

<sup>17</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, Testimony of Joe M. Allbaugh before the Senate Appropriations Committee, Subcommittee on VA, HUD and Independent Agencies, at <http://www.fema.gov/about/director/allbaugh/testimony/051601.shtm>.

<sup>18</sup> P.L. 108-7, 117 Stat. 515.

<sup>19</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, Fiscal Year 2003 Pre-Disaster Mitigation Program, at <http://www.fema.gov/government/grant/pdm/fy2003.shtm>.



However, others contended that only communities that have had recent disaster experience have the immediate incentive, in the form of a community commitment borne of experience, to take the steps necessary to reduce the risk of future disasters. As one writer in the field has noted, it is imperative to garner community support around a specific action:

This is especially true when those mitigation measures involve cranking up the machinery of government, which, some contend, is especially prone to inertia... Mitigation measures are also most effective when they have the broad support from the greatest number of people across a broad section of the community.<sup>20</sup>

## Mitigation Funding and Studies

Following Hurricane Katrina, Congress chose to reinstate the HMGP to its previous level of 15% for the majority of disasters and established a new graduated scale for larger events.<sup>21</sup> With that change, smaller amounts were requested and appropriated on an annual basis for the PDM program. In FY2006, the appropriated amount was \$50 million. However, since then Congress has appropriated larger sums for the PDM program, equal to or above requested levels.

These increases coincide with studies released in 2005 and 2007, each of which pointed to savings of \$3 to \$4 for each \$1 spent on mitigation.<sup>22</sup> The findings of these studies were important to the PDM program:

provide independent evidence to support what nearly every member of the hazards community knows anecdotally—generally, FEMA mitigation grants are highly cost-effective.<sup>23</sup>

One study, *Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities*, in accordance with the directive from P.L. 106-390, was completed by the Multi-Hazard Mitigation Council (MHMC). The MHMC study defined a broad number of benefits that reached into not only direct FEMA disaster costs but also assessed corollary and indirect savings from mitigation at the local level and within the business sector with an impact, or “ripple effect” on the surrounding communities. The study weighed damages that were not always previously considered when calculating savings, such as business interruption and environmental costs. The study, released in 2005 before the hurricane season, provided a foundation for mitigation that was previously based on anecdote and conjecture. The MHMC study listed areas of savings within communities from mitigation and also focused on the long-

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<sup>20</sup> R.W. Greene, *Confronting Catastrophe* (ESRI Press: Redlands, California, 2002), p.15.

<sup>21</sup> Stafford Act, Section 404, as amended, 120 Stat. 1447. If Stafford Act funding does not reach \$2 billion, the HMGP program will receive 15% of that amount. For disasters between \$2 billion and \$10 billion, the HMGP award is 10% of the total. If the disaster total is between \$10 billion and \$35.3 billion, the HMGP award is 7.5% of that amount.

<sup>22</sup> Multi Hazard Mitigation Council of the National Institute of Building Sciences, *Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities*, December 2005, at <http://www.nibs.org/MMC/mmchome.html>, and *CBO Potential Cost Savings from the Pre-Disaster Mitigation Program*, Congressional Budget Office, September 2007 at <http://www.cbo.gov/ftpdocs/86xx/doc8653/09-28-Disaster.pdf>.

<sup>23</sup> “Mitigation Generates Savings of Four to One and Enhances Community Resilience,” *Natural Hazards Observer*, vol.xxx, no.4 (March2006), p. 1 at <http://www.colorado.edu/hazards/o/archives/2006/mar06/mar06a.html>.

term beneficial effects that mitigation activities would have on the federal treasury on an annual basis.<sup>24</sup>

Building on the MHMC study, in 2007 the Congressional Budget Office issued its report on pre-disaster mitigation cost savings. While using slightly different assumptions and cognizant of federal spending time lines, that report also noted a proportional savings derived from the PDM program. The CBO study explained that PDM savings would likely benefit two FEMA programs.

Any federal savings from PDM-funded mitigation projects would occur largely in FEMA's disaster relief programs (which are funded from discretionary appropriations) and in its National Flood Insurance Program (which ordinarily is not funded through the appropriation process).<sup>25</sup>

These findings provided a justification for increased PDM funding, which followed in FY2007.

## Post-Katrina Funding—Competitive and Formula Grants

During FY2007 Congress increased PDM funding to \$100 million, raised that amount to \$114 million in FY2008, and in FY2009 reduced that amount to \$90 million. In recognition of the larger appropriated levels, Congress directed FEMA to implement the state minimum of \$500,000 specified in the Stafford Act<sup>26</sup> for eligible projects.<sup>27</sup> This formula, in effect, made PDM both a competitive and a formula-driven program. The implementation of the state minimum also served to retain interest in mitigation for states that may not have been competitive, nor experienced recent disasters.

The overall change in formula created a new kind of hybrid program, in which grants would continue to be awarded through a competitive process and also through guaranteed formula amounts for each state (\$500,000) with eligible projects or plans. For example, from a total program amount of \$100 million, up to \$25 million is in the formula pool and the remaining \$75 million is available for the competitive grants.

The Congressionally directed spending for FY2008 PDM grants, the first earmarks for the PDM program, accounted for over \$50 million or 44% of the funding. After factoring in state minimums, the available amount for open competitive grants was reduced from three quarters to just over a third of the total funds. The directed grants for FY2009 total \$25 million, or just over 27% of the appropriation. Taken together, the earmarks combined with the state minimums could total \$50 million or 55% of the total appropriated program funds. In reaction to this trend, amendments were offered in each chamber, during consideration of the FY2010 appropriations

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<sup>24</sup> Multi-Hazard Mitigation Council, National Institute of Building Sciences, *NATURAL HAZARD MITIGATION SAVES: An Independent Study to Assess the Future Savings from Mitigation Activities, Volume 1 - Findings, Conclusions and Recommendations*, 2005, pp. 2-6.

<sup>25</sup> U.S. Congressional Budget Office, *Potential Cost Savings from the Pre-Disaster Mitigation Program*, September 2007, p. 4.

<sup>26</sup> 42 U.S.C. 5133(f).

<sup>27</sup> U.S. Department of Homeland Security - Federal Emergency Management Agency, *FY2007 Pre-Disaster Mitigation Program Guidance*, p. 1, at <http://www.fema.gov/library/viewRecord.do?id=2095>.

bill, to curtail the earmarks. The Senate amendment would have eliminated the earmarks from the FY2010 appropriations.<sup>28</sup>

In addition to Congressionally directed spending, FEMA has established a program rule that governs the size of respective grants in FY2009.

States and territories that submitted less than \$500,000 in applications received the amount requested, provided those applications are determined to be eligible. The maximum PDM award for any one State shall not exceed \$17 million. There is a \$1 million cap on the federal share available for plans and a single federal share cap of \$3 million for projects.<sup>29</sup>

The Bush Administration requested \$75 million for FY2009. Congress funded the program at the \$90 million level. The budget justification submitted to Congress for the FY2009 budget noted the \$39 million reduction from the FY2008 level did not offer any comment or explanation for the change. Some have suggested that the seeming carryover amount between FY2007 and FY2008 of more than \$65 million may have contributed to the conclusion that additional funding was not needed. FEMA has noted that since PDM funds are no-year funds with a great amount of state and local participation in the process, the lag time on the expenditure of funds is a practical and inevitable part of program administration. FEMA has also emphasized that funds being carried over are funds dedicated to projects that have been selected and are only awaiting final clearance.

## Grant Applications and Categories

Given the authorizing language that requested that each Governor submit “not fewer than five local governments to receive assistance under this section”<sup>30</sup> it is not surprising that the program would have a large number of grant awards (a total of 149 grants were awarded for FY2008 and 443 applications were received for FY2009). The total number of grant awards is amplified by the significant number of planning grants. In FY2008, planning grants accounted for 79 percent of the awarded grants. These are usually awards for much smaller amounts than project applications, and planning grant awards are distributed to many more communities. The interest in planning may derive from the fact that a mitigation plan is a prerequisite for receiving both PDM and HMGP funding.

Grants have been awarded for a variety of hazards being addressed by states and communities. The Government Accountability Office (GAO) reviewed the FY2003 projects and found that more than half of the projects identified flooding as the primary hazard being mitigated by the grants. That same review found that 12% of the grants were based on hurricane projects, just under 7% sought to mitigate the effects of an earthquake, and 4% listed tornadoes as the primary hazards to be addressed.<sup>31</sup>

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<sup>28</sup> Sen. Feingold's amendment #1402 to H.R. 2892 would have removed earmarked projects in both the PDM program and the Emergency Operations Center (EOC) program. The amendment failed on a vote of 60 to 38 on July 8, 2009. {<http://www.senate.gov/galleries/pdcl/index.htm>}.

<sup>29</sup> Memo from Mike Grimm, FEMA Mitigation Directorate, May 13, 2008, available from the authors.

<sup>30</sup> 42 U.S.C. 5133.

<sup>31</sup> See Government Accountability Office, *Hurricanes Katrina And Rita: Unprecedented Challenges Exposed the Individuals and Households Program*, Washington, September 2006, <http://www.gao.gov/new.items/d04727r.pdf>.

The PDM projects funded at the direction of Congress for FY2008 also sought to accomplish a variety of purposes. Some appear to be traditional PDM projects such as the acquisition and relocation of properties and wildfire mitigation activities. However, other projects listed among the earmarks appear to be for purposes listed as ineligible in the PDM program guidance materials. Examples of those projects include funding for equipment, fire suppression activities, dams, and emergency alert and notification systems. These projects reflect the preparedness vs. mitigation debate that, as the “Program Purposes” and “Funding Criteria” sections of this report explain, has been with the PDM program since its inception.

## Issues for Congressional Consideration

As Congress considers re-authorization of the PDM program there are several issues that have emerged as points of discussion. These issue include the pace of funding distribution, the best methods for funding awards, the priority uses for PDM funds, the amount of resources devoted to the program, and the length of authorization for the program. Also, new initiatives have emerged from the 2010 budget and legislation introduced that suggests new directions for the PDM program.

### The Pace and Breadth of PDM Funding Distribution

As previously noted, in FY2008 the PDM program was earmarked for the first time.<sup>32</sup> The PDM program was earmarked again in the FY2009 appropriation.<sup>33</sup> The only previous earmarks of mitigation projects in general appeared in the FY1999 Appropriations bill that earmarked unspent and prospective HMGP funds for several projects.<sup>34</sup> Exact amounts of funding and the rate at which such grant funds are disbursed can be difficult to discern, but the broad geographic distribution of recipients has been a constant in the PDM program. The congressionally directed earmarks for the FY2008 and FY2009 add to that distribution across many jurisdictions.

**Table 2. Recent Distribution of PDM Funds, FY2006 to FY2008**

Agency	FY2006 Recipients	FY2007 Recipients	FY2008 Recipients	FY2009 Recipients
DHS/FEMA	67 grants in 37 states, 1 territory	249 grants in 44 states, 1 territory	144 grants in 44 states, 1 territory	137 grants in 43 states, 1 territory
DHS/FEMA	4 grants to 4 Indian Tribal Governments	6 grants to 6 Indian Tribal Governments	None	1 grant to 1 Indian Tribal Government
Congressional Direction	N/A	N/A	113 grants in 27 states <sup>a</sup>	52 grants in 27 states <sup>b</sup>

<sup>32</sup> P.L. 110-161, Consolidated Appropriations Act, 2008, Division E - Department of Homeland Security Appropriations Act, 2008 (House Appropriations Committee Print) pp. 1112-1115.

<sup>33</sup> P.L. 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (House Appropriations Committee Print) pp. 685-687.

<sup>34</sup> P.L. 106-74, 113 Stat. 1086. This act contained earmarks of mitigation funds for California, Florida and North Carolina.

**Source:** All information for years FY2006, FY2007, 2008 and FY2009 are from FEMA, Mitigation Directorate, July 7, 2009.

- a. The first total for grants numbers and states for FY2008 include the projects identified in the House Appropriations Committee print of Congressional earmarks for the PDM program. The initial number of projects listed under P.L. 110-161 totaled 95 projects. The increase is based on FEMA's engagement with selected communities and developing more eligible mitigation projects.
- b. The initial number of projects listed under P.L. 110-329 for FY2009 totaled 52 projects. This number could expand as FEMA works with the local communities receiving the earmarked funds to determine eligible projects.

The funds have been distributed widely, but not always rapidly. While the earmarks are new to the program, some have pointed to the lags in PDM spending, such as the carryover of funds from FY2007 to FY2008, as an explanation for the earmarks. Others have suggested that the same lag in funding, interpreted as a lack of interest in or need for the program, may have resulted in a reduced request by the Administration for FY2009 PDM funding.

One consideration in the pace of the program is that mitigation projects can be complicated to put together since their impact may be spread across various sectors of communities and can also require local consensus and a contribution of resources. The state and local cost share is 25%.<sup>35</sup>

Another possible factor in the arguably slow pace is that PDM funds are available until expended. Since, under the PDM program's guidance, the funds can be used for up to three years from the date of the award some may contend there is less urgency to get funds out immediately and more time for communities to develop effective projects and plans and more time for FEMA, through a peer review process, to carefully review the submitted projects and plans.

The perception of slow distribution of PDM funds has continued in later years as evidenced in the pace of awards made. According to FEMA listings, in FY2006 when \$50 million was made available, only \$39 million was awarded.<sup>36</sup> Similarly, for FY2007 \$100 million was appropriated, but only \$52.3 million had been awarded, and for FY2008 awards are still pending according to totals on the FEMA website.<sup>37</sup>

However, FEMA staff have provided updated figures that now place total FY2007 funding distributed at \$131 million for a year when \$100 million was appropriated. These larger figures represent funding for planning and projects carried over from previous years.<sup>38</sup> This approach to batching funding was officially used by FEMA in FY2005.

Approximately \$255 million is available for competitive grants, technical assistance, and program support for the FY 2005 PDM program. As PDM funds are available until expended, this amount is comprised of Fiscal Year 2003, 2004, and 2005 funds.<sup>39</sup>

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<sup>35</sup> 44 CFR 206.432(c).

<sup>36</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *List of FY 2006 Pre-Disaster Mitigation Grant Recipients*, at [http://www.fema.gov/government/grant/pdm/fy06\\_pdm\\_grant\\_recipients.shtm](http://www.fema.gov/government/grant/pdm/fy06_pdm_grant_recipients.shtm).

<sup>37</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *List of FY 2007 Pre-Disaster Mitigation Grant Recipients*, at [http://www.fema.gov/government/grant/pdm/fy07\\_pdm\\_grant\\_recipients.shtm](http://www.fema.gov/government/grant/pdm/fy07_pdm_grant_recipients.shtm).

<sup>38</sup> The latest figures provided by Mike Grimm, Deputy Director, Risk Reduction Division, FEMA Mitigation Directorate, in a memo as of May 20, 2008. The update presents a much different picture from the figures available on the public website.

<sup>39</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Fiscal Year 2005 PDM Information*, at <http://www.fema.gov/government/grant/pdm/fy2005.shtm>.

Also, when assessing funds not allocated to awarded grants it is helpful to understand how the unallocated program dollars are used. Some of those funds are devoted to ongoing expenses for each program year including FEMA administrative costs, technical assistance contracts to assist applicants and sub-applicants, management costs awarded to states, and other costs associated with the award amounts. FEMA also holds back a small amount of funding for “reconsideration” which allows for the review of projects and the correction of possible errors in program administration, grant selection, and the calculation of funding amounts.<sup>40</sup> All of these factors, from FEMA’s perspective, are reasonable uses for unexpended funds. FEMA has recently issued a chart that identifies the broad uses of program funds.

**Table 3. PDM Funds**

(in millions)

Program	Total Appropriations <sup>a</sup>	Admin. Program Support/Technical Assistance <sup>b</sup>	Total Obligated <sup>c</sup>	Applicant Management Costs	Remaining Funds for Grants
PDM	\$664,000,000	\$66,400,000	\$478,348,302	\$19,272,526	\$99,979,172

**Source:** FEMA Mitigation Directorate, March, 2009.

**Notes:** Click here and type the notes, or delete this paragraph

- a. Totals from program inception through FY2008.
- b. PDM – 3% admin. 7% program support and technical assistance.
- c. Total obligated does not include administrative, management and technical costs.

The reserved funds and other costs can be problematic, however, when they are not identified in program lists of award amounts and are estimated as a percentage of annual program costs. Similarly, FEMA’s approach to batching together several years of project funding may be a reasonable approach to multi-year projects, but is not explained in the fiscal year totals currently available to the public. These kinds of issues in how funding awards and other spending are reported can present problems to Congress in assessing the program as a whole.

## Terrorism and Pre-Disaster Mitigation

Some have questioned whether the PDM funding should be available to mitigate the effects of terrorist events. The response of some PDM advocates is one that applies not only to purpose but particularly to the overall balance of resources between mitigation and preparedness programs. Some participants in this debate have noted that while some projects may arguably be considered preparedness or mitigation, there is little similarity between funding amounts available for those two purposes, nor for the programs addressing terrorism.

While funding for the PDM program previously exceeded \$100 million, the amounts for preparedness efforts for all-hazards, including terrorism, under DHS/FEMA grants has totaled in the billions at DHS/FEMA in recent years. Among those preparedness programs at FEMA, several of the grant programs permit the purchase of equipment such as warning systems and other preparedness projects sometimes requested under the PDM program.<sup>41</sup> Perhaps most

<sup>40</sup> Interview with Michael Grimm, Mitigation Directorate, May 14, 2008.

<sup>41</sup> For details on listed programs, see CRS Report R40246, *Department of Homeland Security Assistance to States and* (continued...)

importantly, the authorizing language for the PDM program specifically makes clear that the state and local governments interested in participating in the program are expected to identify “natural disaster hazards” in areas under their jurisdiction for mitigation work.<sup>42</sup>

## Projects and Plans

As noted earlier, grants for protecting public buildings or private residences are the awards most closely associated with PDM. Projects tend to be costly and relatively large in scale when allocated for the purposes of relocating neighborhoods, building large safe rooms, or undertaking similar expensive, structural work. However, another significant category of eligible work under the PDM program is the creation or improvement of hazard mitigation plans for a community or state. With the passage of P.L. 106-390, the Disaster Mitigation Act of 2000 (DMA2K), planning took on much greater significance. In addition to authorizing PDM, DMA2K also authorized the requirement for mitigation planning and authorized increasing the share of HMGP grants from 15% to 20% of total disaster spending for states with an “enhanced mitigation plan.”<sup>43</sup> The complementary nature of the Stafford Act hazard mitigation authorities is arguably evident when states use PDM funds to develop the “enhanced plans” that, when approved, result in higher levels of HMGP funding.

Such planning grants are a major component of the PDM program. In FY2006 the planning grants comprised 47% of total grants selected for further review; in FY2007 59% of such grants selected for further review were for planning efforts; and, in FY2008, of the 149 proposed projects, 117 were identified as planning grants.<sup>44</sup> However, the actual funding amounts for planning are relatively low. During FY2006, projects selected for further review projected grant spending of \$42.8 million while planning grants selected for further review totaled \$3.9 million out of a total of \$50 million.

Similarly, in FY2007, the large majority of planning grants (135 of the grants selected for further review) totaled only \$16.5 million while project grants selected for further review (75 grants) were awarded \$67.1 million out of \$100 million available for awards.<sup>45</sup> Given the nature of project grants and the large undertakings they represent (such as property acquisitions and similar commitments), they are far more expensive than planning grants.

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(...continued)

*Localities: A Summary and Issues for the 111th Congress*, by Shawn Reese.

<sup>42</sup> 42 U.S.C. 5133(c).

<sup>43</sup> 42 U.S.C. 5165(e).

<sup>44</sup> U.S. Department of Homeland Security-Federal Emergency Management Agency, *Fiscal Year 2006 and 2007, Pre-Disaster Mitigation Programs*, at <http://www.fema.gov/government/grant/pdm/fy2006.shtm>, *Fiscal Year 2007 Pre-Disaster Mitigation Program*, at <http://www.fema.gov/government/grant/pdm/fy2007.shtm>, and *Fiscal Year 2008 Pre-Disaster Mitigation Program*, at <http://www.fema.gov/government/grant/pdm/fy2008.shtm>. Note: Grants “selected for further review” refers to projects that have passed the first stage of review and await review for the National Environmental Policy Act (NEPA) and Environmental and Historic Preservation review. (Interview with Michael Grimm, FEMA Mitigation Directorate, May 13, 2008.)

<sup>45</sup> *Ibid.*

**Table 4. Planning Grants and Project Grants**

Fiscal Year	Planning Grants Selected	Project Grants Selected	PDM Program Funding (millions)	Planning Grants in Dollars (millions)	Project Grants in Dollars (millions)
FY2006	47%	53%	\$50	\$3.9	\$42.8
FY2007	59%	41%	\$100	\$16.5	\$67.1
FY2008	79%	21%	\$114	\$12.3	\$27.7

**Source:** FEMA Mitigation Directorate.

The remaining \$20 million for the FY2007 awards includes awards still being made, administrative costs, technical assistance for applicants, state management costs, and funds held back for reconsideration.<sup>46</sup>

## Resources vs. Requests

The importance of the actual amount of funds appropriated to the program is apparent when reviewing the amounts available for PDM grants alongside the amounts requested by applicants. In FY2006 and 2007, for example, the funding requested was nearly triple the amounts available. In FY2006, \$50 million was available and FEMA received initial requests totaling \$134 million. In FY2007, FEMA had \$100 million available for grants and received requests for \$292 million.<sup>47</sup> Given the limit of five applications per state, it is reasonable to suggest that the amounts requested could have been even higher absent that limitation.

## Funding Criteria

The authorizing legislation for PDM sets forth an array of funding criteria. The criteria focus on elements such as the nature of the hazard, the degree of commitment of and coordination by the state and local governments (including consistency with appropriate mitigation plan), and the “extent to which prioritized, cost-effective mitigation activities” can produce clear results.<sup>48</sup>

Along with the statutory funding criteria, FEMA, in its PDM program guidance, lists ineligible activities for PDM planning and project activities. FEMA staff noted that they have derived many of the suggested changes from the eligibility listings from the peer review panels, composed of local practitioners in the mitigation/emergency management field, that review applications each year. It is the intent of the program staff to provide more clarity on eligible activities for applicants by providing such a list.<sup>49</sup>

<sup>46</sup> FEMA updated the FY2007 amounts to \$131 million expended for FY2007. This amount was \$31 million over the appropriated amount for FY2007 and represents carry-over funding for projects that were selected in previous years but which had not received final approval. (Interview with Mike Grimm, FEMA Mitigation Directorate, May 22, 2008.)

<sup>47</sup> U.S. Department of Homeland Security - Federal Emergency Management Agency, *Fiscal Year 2006 Pre-Disaster Mitigation Program*, at <http://www.fema.gov/government/grant/pdm/fy2006.shtm>, and *Fiscal Year 2007 Pre-Disaster Mitigation Program*, at <http://www.fema.gov/government/grant/pdm/fy2007.shtm>.

<sup>48</sup> 42 U.S.C. 5133(g).

<sup>49</sup> Interview with Mike Grimm, Deputy Director, Risk Reduction Division, Mitigation Directorate, U.S. Department of Homeland Security, Federal Emergency Management Agency, May 20, 2008.



The ineligible activities list for FY2008 contains eight items related to PDM planning and 23 ineligible activities for the PDM project grants. (For the latter category, this is an increase; for FY2007, the number of ineligible activities was 16).<sup>50</sup> The list broadly supports compliance with practices such as environmental and historic preservation and the Coastal Barrier Resources Act (CBRA). But other excluded items (such as the construction of levees or flood mapping) are arguably seeking to ensure that PDM planning or project funds do not duplicate similar efforts funded by other programs.

However, some observers argue that the FEMA interpretation of eligible PDM projects has grown overly restrictive, particularly with regard to equipment purchases to address different hazards. For example, some observers believe that the purchase of warning or alert notification systems should be an eligible expense for PDM. (It should be noted that warning systems and other “gray areas” can be funded through the HMGP program’s 5% initiative that was put in place a dozen years ago. This was established to allow some flexibility for actions that may or may not meet cost-effectiveness criteria).<sup>51</sup> Others suggest that the purchase of generators under the PDM program should be eligible beyond the standards for such purpose in the program guidance.<sup>52</sup> The arguments over individual categories and projects are symbolic of the overarching effort to differentiate the concepts of preparedness and mitigation.

## Project Eligibility

There are a number of project activities that are ineligible under FEMA’s program guidance for the PDM program. Some of the ineligible activities include costs of maintenance to structures (e.g., levees and dams); the purchase of generators for facilities that are not a part of a larger mitigation project; and the broadest category – projects for which benefits “are available from another source for the same purpose.”<sup>53</sup>

A particular example at the crux of this debate concern warning systems. Many communities have sought to use PDM funds to purchase warning systems such as sirens to protect their citizens against sudden disasters. FEMA considers such alert notification systems as eligible under disaster preparedness grants but not under the PDM program. Similarly, FEMA has previously determined that the purchase of stand-alone generators is a preparedness effort to address the likely results of a disaster rather than mitigating its effect. One exception is the purchase of generators that will power a mitigation effort. For example, a generator providing power to activate hurricane storm shutters would be eligible. Generators that provide power for critical public facilities may also be eligible.

For FY2008, some of the congressionally earmarked projects for PDM include some of the activities listed as ineligible in FEMA’s program guidance such as fire suppression activities and the purchase or enhancement of emergency alert and notification systems. Such designations do not involve differences over the location of grants but their purposes. (The FY2009 listing of

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<sup>50</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Pre-Disaster Mitigation Program Guidance*, pp. 27-28 and pp. 39-40.

<sup>51</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Hazard Mitigation Grant Program Desk Reference*.

<sup>52</sup> *Ibid.*

<sup>53</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, “PDM Program Guidance, 4.3 Ineligible Program Activities and Costs,” p. 40 at <http://www.fema.gov/library/viewRecord.do?id=3029>.

earmarks did not list the type of project or purpose.) Congress may wish to express its disagreement with FEMA's guidance or it may direct FEMA to adhere to the PDM program's current eligibility criteria when making PDM grant awards.

## Length of Authorization

The PDM program has been re-authorized previously in five different pieces of legislation, initially for three years, then two one-year re-authorizations through appropriations bills, and then another three year authorization from 2005 to 2008 followed by a one-year authorization through FY2009.<sup>54</sup> The 111<sup>th</sup> Congress is considering legislation that would provide a three-year authorization through FY2012.<sup>55</sup> The original sunset date of P.L. 106-390 (December 31, 2003) was intended to provide time for more information to be gathered on the efficacy of pre-disaster mitigation. Some of that has been presented in both the Multi Hazard Mitigation Council Report as well as the report by the Congressional Budget Office. The recurrent sunset date, however, has set the PDM program apart from the rest of the Stafford Act which is a free-standing, no-year authorization. If the initial questions concerning the efficacy of the program are resolved, Congress might authorize the PDM program, like the rest of the Stafford Act, without a sunset date..

On the other hand, it can be argued that some of the Stafford Act provisions are so vital to emergency situations (e.g., debris removal, temporary sheltering and lodging) that not having to seek re-authorization on a regular basis is a practical and effective approach to the disaster response and recovery aspects of the statute. Conversely, since the PDM program is a grant program not funded from the Disaster Relief Fund (DRF), some might contend, having a three to four year re-authorization cycle provides incentives to all participants to refine and improve the program in anticipation of Congressional oversight. Also, through annual appropriations Congress can actively evaluate the PDM program accomplishments.

## Methods of Awarding PDM Funds

When the pilot program, Project Impact, was initiated in 1997 an emphasis was placed on the communities' disaster history, the involvement of community-based organizations in mitigation work, the participation of the local business community and the commitment of the state and local governments. There was some concern at the time on the part of state emergency management officials that they were not sufficiently involved during the project selection process. The switch to a competitive process in PDM reflected some of those factors that Project Impact employed, but also placed greater emphasis, in light of statutory language, on cost-benefit ratios. Also, since funding for planning was made eligible, the program opened up to many communities that desired an improved mitigation plan.<sup>56</sup>

For the overall awards process, Congress generally has come to direct the PDM program in annual appropriations law rather than through Congressional hearings specifically on the PDM program and resulting authorizing legislation.

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<sup>54</sup> P.L. 106-390, 114 Stat. 1557; P.L. 108-199, 118 Stat. 441; P.L. 108-447, 118 Stat. 3343; and P.L. 109-139, 119 Stat. 2649; and P.L. 110-329, 122 Stat. 3690.

<sup>55</sup> H.R. 1746.

<sup>56</sup> The trend continued in FY2008 with 117 of the 149 grant projects described as mitigation planning projects.

State emergency managers have stated their position that a competitive process may tend to limit smaller states' ability to access a program like PDM. Echoing the tenets of federalism, they would like funds made available to each state and decisions made at the state and local level concerning the hazards that pose the most significant threats and the areas that could benefit most from PDM funding. As one state emergency management director, speaking on behalf of the National Emergency Management Association (NEMA), testified:

Attempting to prioritize limited predisaster mitigation funding on the national level is counterproductive to the establishment of state and local planning, therefore NEMA supports the distribution of predisaster mitigation funds by a base plus population formula rather than by competitive grants. The competitive system as it is presently funded creates more losers than winners: in an enterprise that seeks to encourage communities to engage to protect themselves, it seems counterproductive to pit good programs against good programs when the objective is that predisaster mitigation programs be undertaken.<sup>57</sup>

Since 2007, in addition to the competitive process, PDM administrators have implemented a \$500,000 minimum per state for eligible projects or plans.<sup>58</sup> Given the amount of appropriations, this minimum amount means that close to 25% of funds may now be awarded outside of the competitive process. Depending on the number of Congressionally directed projects, that percentage may be much larger.

Congress may consider examining the PDM program to return to its initial form of award selection by Governors and the President, or establish a strictly competitive grant process. A third option is the present configuration of a hybrid program that is competitive but with some flexibility for awards for every state. Congress can also consider if it wishes to continue with congressionally-directed spending that was initiated in FY2008 and, if so, at what level since it accounted for nearly half of all spending. H.R. 1746 which reauthorizes PDM has set the amount for state minimums for PDM funding at \$575,000 per state. The Administration's budget request for FY2010 now presents an additional option for the management of the program.

## Allocations vs. Competition

The FY2010 budget calls for a new approach to the distribution of funds. Given the state minimum awards of \$500,000 each and the Congressional earmarks, the remaining total funds to be distributed on a competitive basis has diminished to a much smaller amount. In reaction to this trend, the administration has suggested jettisoning the competitive formula (which requires a large peer group panel and a lengthy judging process) in favor of a risk-based allocation formula that would simply continue the distribution to states based on FEMA's assessment of the risk. This approach would still leave discretion in the hands of the states to determine their priorities for individual projects. FEMA has done work in risk assessment, particularly its HAZUS program that estimates damage based on assorted disaster scenarios. FEMA defines HAZUS as

a powerful risk assessment methodology for analyzing potential losses from floods, hurricane winds and earthquakes. In HAZUS-MH, current scientific and engineering

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<sup>57</sup> Testimony of James Mullen, Mitigation Chair, National Emergency Management Association, in U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Saving Lives and Money Through the Pre-Disaster Mitigation Program*, hearing, 110<sup>th</sup> Cong. 2<sup>nd</sup> sess., April 30, 2008.

<sup>58</sup> Under H.R. 1746, passed by the House on April 22, 2009, the minimum would be increased to \$575,000.

knowledge is coupled with the latest geographic information systems (GIS) technology to produce estimates of hazard-related damage before, or after, a disaster occurs.<sup>59</sup>

FEMA will be using other inputs as well to determine its risk-based allocations. While the budget suggests a new approach to the distribution of funds, the re-authorization legislation (H.R. 1746) that passed the House in the 111<sup>th</sup> Congress has written the competitive process into the proposed law. Also, the re-authorization legislation increases the minimum amount per state to \$575,000, further reducing the pool for a competitive process.

Previously, the direction toward a competitive process had been contained in annual appropriations measures. This presents a question for Congress whether to accept the Administration's new initiative or continue with the competitive approach. One early indication that the new approach to risk-based allocations may not be adopted immediately was the commentary in the House Homeland Security Appropriations Report:

As part of the budget, FEMA requested to drastically change the distribution methodology used for awarding PDM grants. However, the agency was unable to adequately articulate to the committee the ramifications or benefits of their new approach and signaled that the proposal was still being developed.<sup>60</sup>

The House Appropriations Subcommittee for Homeland Security said it would not approve of the change. The legislative process is not yet completed on the appropriation. But the report also noted that H.R. 1746, the PDM authorization bill which had passed the House by a comfortable margin, did not include this approach and instead seeks to place the competitive process in law. Since neither piece of legislation has been completed, additional dialogue on this issue is likely.

## A Different Approach to Mitigation

An entirely different approach would be to make a structural change in program delivery. Under this proposal, the PDM program and the HMGP program would move from FEMA to a newly created Federal Mitigation and Recovery Authority.

In the aftermath of Katrina there has been criticism of FEMA's uncertain role in long-term recovery as opposed to its initial role in delivering emergency response programs such as temporary housing. (The latter also drew criticism, but FEMA's authority and responsibility was not in question.) Some have suggested that a separate authority/organization with expertise in the rebuilding cycle could be partnered with mitigation programs. In this way, two important phases—building back safer while also making communities more resilient—could receive separate but complementary attention. PDM requires planning and community-wide participation, as does recovery. The roles FEMA is expected to assume are diverse and require very different skills. Some experts have noted the differing roles may not be complementary.

However, it is not clear to us that institutional arrangements that are appropriate for implementing emergency measures after a disaster has occurred (crisis response) are also the appropriate institutional arrangements for long-term forward planning of mitigation measures before a disaster has occurred (given the three levels of government with

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<sup>59</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *HAZUS, FEMA's Methodology for Estimating Potential Losses from Disasters*, June 11, 2009 at <http://www.fema.gov/plan/prevent/hazus/index.shtm>.

<sup>60</sup> Department of Homeland Security, Appropriations Bill 2010, Report 111-XX, 111<sup>th</sup> Cong. 1<sup>st</sup> sess., p. 125.

jurisdictional mandates in this context), which in turn may not be appropriate for planning the long-term recovery of devastated regions.<sup>61</sup>

## Direct Application for PDM Grants by Eligible Non-Profits

Currently, non-profits or non-governmental organizations (NGOs) with eligible projects must submit their applications through their local government. This process assures knowledge and approval by local authorities. Such an approach can also combine the perspective of the non-profit with the interest of the community as a whole. The current system arguably is a reasonable construct for communication and cooperation at the local level. However, it also means that the local government officials must move promptly, and make a submission in accordance with program rules, for a project that may not be a priority or spark administrative interest. When, in particular circumstances, this could be a burden on a local government with limited resources, the plans or projects could also be submitted through a state government as well.

In order to improve the efficiency of the competitive process, it may be possible to permit NGOs to submit their project directly to FEMA. However this should be done with the requirement that the application has been, at a minimum, shared with the local government at the same time so that they may be not only aware of the project, but in agreement that the project comports with local mitigation planning. This approach was suggested in testimony by an official of an association of local government emergency managers.<sup>62</sup> This type of approach would also give the local or state officials the opportunity to comment on the project proposal.

Others have suggested that an NGO application for a PDM grant must be a part of the state or local hazard mitigation plan. Current FEMA guidance already states that requirement.<sup>63</sup> Since FEMA has placed a priority on project compliance with the plans, the instructions for NGOs that currently are a part of the program guidance could be added to statutory language. The legislative criteria for PDM only require that projects submitted by a state or local government be “consistent with the mitigation plan.”<sup>64</sup>

## Upgraded Codes and Zoning

In a hearing on the re-authorization of the PDM program, Subcommittee Chair Eleanor Holmes Norton queried panelists on evaluating the status and quality of local codes and zoning as part of the assessment of PDM grant proposals.<sup>65</sup> It could be argued that appropriate codes would best reflect the “degree of commitment by a state or local government” that the Stafford Act lists as a

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<sup>61</sup> Michael J. Trebilcock and Ronald J. Daniels, “Rationales and Instruments for Government Intervention,” in Ronald J. Daniels, Donald F. Kettl, and Howard Kunreuther, eds. *On Risk and Disaster: Lessons from Hurricane Katrina*, Philadelphia: University of Pennsylvania Press), p. 105.

<sup>62</sup> Testimony of Robert C. Bohlmann, U.S. Government Affairs Committee Chair, International Associations of Emergency Managers, in U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Saving Lives and Money Through the Pre-Disaster Mitigation Program*, hearing, 110<sup>th</sup> Cong. 2<sup>nd</sup> sess., April 30, 2008.

<sup>63</sup> U.S. Department of Homeland Security - Federal Emergency Management Agency, Pre-Disaster Mitigation Program Guidance, at <http://www.fema.gov/library/viewRecord.do?id=3029>.

<sup>64</sup> 42 U.S.C. 5132(g)(7).

<sup>65</sup> House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, “Saving Lives and Money Through Pre-Disaster Mitigation,” April 30, 2008.

consideration.<sup>66</sup> While Representative Norton did not endorse that approach she was interested in hearing from panelists representing state and local officials. Panelist Jim Mullen of Washington state noted the difficult and lengthy process in changing a code. Other experts have pointed out the opposition that such proposed changes can generate within a community.

Developers, builders, and other economic interests, including individual property owners, often oppose the adoption of strict land-use regulations and building standards and too often successfully prevent their adoptions. They argue that such regulations will increase the cost of building, reduce the value of property, limit the prerogatives of property owners in terms of what they can and cannot do with their property, and make it more difficult to sell the property to others. In large measure, their arguments are valid. The question, however, is whether those concerns outweigh the potential costs of not mitigating disasters.<sup>67</sup>

Local codes and zoning can arguably be considered the strongest commitment to mitigation that can be made by a governmental entity. That approach, the insistence on strong local codes, has been a part of the National Flood Insurance Program (NFIP) since its inception. NFIP regulations stipulate a criterion for participation in the flood insurance program.

the adequacy of a community's flood plain management regulations. These local regulations must be legally enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e. mud flow) or flood-related erosion areas, and the community must provide that regulations take precedence over any less restrictive conflicting local laws, ordinances, or codes.<sup>68</sup>

Shifting more of the PDM program to a code or zoning threshold could challenge communities to a greater mitigation commitment than required under current program criteria. As one observer has noted, a dominant federal role may appear logical in the context of overall disaster spending and in its purpose to save lives and protect property. However, the perceived federal leadership and funding also may come at a price beyond the budgetary implications.

The perception of federal benevolence discourages responsible hazard mitigation among nonfederal interests, thus contributing to the potential for greater losses in future disasters. Shirking responsibility for hazard mitigation among states and local governments may take two forms: (1) unwillingness to expend their own funds for disaster planning and hazard mitigation and (2) avoidance of the political and fiscal burdens of regulating land use in areas subject to natural hazards.<sup>69</sup>

While strong and effective codes may reduce the impact of hazards, local officials, it may be argued, are weighing other considerations regarding economic growth for the community, which in turn contribute to the support of many other local governmental obligations. Additionally, the PDM program is voluntary. Communities participating in the program are taking the initiative to protect their citizens and their property. In most cases, these communities are also paying the 25% cost share for the project or plan. Another consideration is that for a program that has been criticized for its pace of expenditures, linking such spending to the development of codes or changes in zoning laws would likely create a far more lengthy application and award process.

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<sup>66</sup> 42 U.S.C. 5133(g)(2).

<sup>67</sup> William L. Waugh, Jr., *Living With Disasters, Dealing With Disasters*, (New York: M.E. Sharpe, 2000), p. 155.

<sup>68</sup> 44 CFR Subpart A, 60.1(b).

<sup>69</sup> Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events*, (Washington, DC: Island Press, 1999), p. 102.

Congress' continuing interest in this area can be noted in legislation that seeks to link mitigation concepts with zoning. The proposed legislation seeks to "enhance existing programs providing mitigation assistance by encouraging states to adopt and actively enforce state building codes."<sup>70</sup> The bill links support for codes to both the Hazard Mitigation Grant Program (Section 404 of Stafford) and the PDM program.

## Multiple Mitigation Programs

Another issue for Congress is consideration of the PDM program within the context of federal hazard mitigation policy as a whole. However, that whole is divided among varying approaches involving timing, targeted funding for particular hazards (notably flooding), and separate funding accounts within FEMA.

Earlier in this report the relationship was noted between the PDM program and the post-disaster HMGP program. In addition to those two programs, FEMA also administers the Flood Mitigation Assistance Program (FMA), which is part of the flood insurance program, the Repetitive Flood Claims Program (RFC) and the Severe Repetitive Loss Program (SRL). These five mitigation grant programs have some differences, but generally fund similar projects. The history behind the programs indicates Congressional intent to address specific problems and also provide discretion to state and local governments in the manner they choose to address specific hazards.

In discussing the overall impact of its programs, FEMA's Mitigation Directorate reported that the existing mitigation grant programs awarded more than \$444.2 million to 1,050 projects and plans nationwide in 2007.<sup>71</sup> The majority of that funding came from the HMGP program, which receives its funding on a formula basis from the Disaster Relief Fund (DRF).<sup>72</sup> The other programs, such as PDM, FMA, and the repetitive loss programs, are individual accounts funded through the annual appropriations process.

The Mitigation Directorate at FEMA has taken steps to, if not totally blend the programs, make sure that the programs are complementary. A good example of this approach is that the guidance provided for grant applications stresses early on that it "does seek to integrate programs by allowing applications to be considered by other mitigation programs."<sup>73</sup> For the FY2009 grant award period, FEMA issued a Unified Hazard Mitigation Assistance (UHMA) guidance.<sup>74</sup> Congress has expressed its interest in this issue. In a report accompanying the House Appropriations bill, the Committee included the following directive.

The Committee notes that this program is one of several mitigation programs run by FEMA, including the Repetitive Flood Claims grant program, the Flood Mitigation Assistance program, the Hazard Mitigation Grant Program, and the Severe Repetitive Loss grant

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<sup>70</sup> H.R. 2592, "Safe Building Code Incentive Act of 2009," 111<sup>th</sup> Cong. 1<sup>st</sup> sess. May 21, 2009.

<sup>71</sup> U.S. Department of Homeland Security - Federal Emergency Management Agency, Mitigation Directorate, Memo from FEMA Office of Legislative Affairs, July 16, 2008.

<sup>72</sup> The DRF is the no-year fund that funds disaster response and recovery programs. Congress provides funding both through annual appropriations and, most prominently, through supplemental appropriations to the DRF.

<sup>73</sup> U.S. Department of Homeland Security - Federal Emergency Management Agency, Mitigation Directorate, Grant Applications Guidance.

<sup>74</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, FY2009 Unified Hazard Mitigation Assistance (UHMA) Guidance, June 2008.

program. Each program has a different authorization, but all aim to mitigate losses from future disasters. The Committee directs FEMA to report to the Committee within six months of enactment of this Act on a mitigation strategy showing how each program contributes to mitigation goals.<sup>75</sup>

An issue for Congressional consideration is whether the programs should be combined for greater and more consistent impact. A subject for consideration is that the damage reductions accomplished by these mitigation programs are reflected in smaller payments from the DRF for future disaster events. Given that fact, an argument can be made that funding for a combined mitigation program could come from the DRF through an annual allocation rather than for separate events and separate accounts. A combined program could address all hazards as is the case with the PDM and HMGP programs.

An additional argument can be made that eventual savings from mitigation activities would accrue to not only the National Flood Insurance Program (NFIP) but also the private insurance industry as losses are reduced. For that reason, it might be argued, payments for at least one program, the FMA, should continue to come from the NFIP. This view of mitigation may also be an argument for the federal government and states to consider encouraging mitigation approaches through private insurers by insisting on the adoption and implementation of mitigation measures similar to the process the NFIP employs.

## **Concluding Observations**

Over the last decade, the Pre-Disaster Mitigation program has developed and grown as mitigation itself has become accepted federal policy. Adoption and expansion of mitigation as a beneficial approach for government has been bolstered by studies that demonstrated cost reductions following disasters due to earlier mitigation investments.

Appraisal of the PDM program is open to different interpretations and conclusions. While program staff at FEMA point to a program with flexibility and an appreciation of the regulatory challenges faced by communities carrying out mitigation projects, other observers see what appears to be the contrary, citing unspent funds and a perceived rigidity in program guidance that hinders the flexibility of local governments in accessing the PDM funding and in using it in a manner they choose. The majority of the program funds is spent on mitigation projects, but a portion of the funding is spent on the development and improvement of state and local mitigation plans. The remainder of funds are spent for technical and administrative assistance or held back for “reconsideration” for some awards.

In FY2008 and FY2009 Congress directed the funding of some PDM projects. The earmarks were broadly distributed as previous PDM funding has been. The congressional earmarks represented 44% and 27% of funds available for the competitive and set-aside PDM grants for 2008 and 2009, respectively. The congressionally directed grants also funded some projects that do not appear to be in accord with FEMA's program guidance.

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<sup>75</sup> U.S. Congress, House Committee on Appropriations, Department of Homeland Security Appropriations Bill 2009, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 110-862, to accompany H.R. 6947, p. 109. After further negotiation, FEMA responded to this request with a briefing for Congressional staff. The briefing slides and information has helped to inform this report.



The 111<sup>th</sup> Congress is considering the re-authorization of the PDM program. The legislation under consideration (H.R. 1746) extends the program and also would codify in law previous program practices with some adjustments. In addition, there are broader considerations the Congress may wish to take up regarding federal mitigation policy in the future and the PDM program's role in that policy.

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